128-590

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~369~~ 99

W. P. WARE, APPELLANT,

vs.

J. H. ALLEN, T. H. WEST AND J. C. BUSH, PARTNERS UNDER THE FIRM-NAME OF ALLEN, WEST & BUSH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPI.

FILED OCTOBER 12, 1885.

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1 UNITED STATES OF AMERICA,
Southern District of Mississippi:

Pleas and proceedings had and done at a regular term of the circuit court of the United States for the fifth circuit and southern district of Mississippi, begun and held, pursuant to law, in the court-room of said court, in the city of Jackson, in said district, on the first Monday of November, A. D. 1884.

Present and presiding, the Honorable R. A. Hill, U. S. district judge for Mississippi.

W. P. WARE *v.* ALLEN, WEST & BUSH.

Be it remembered that heretofore, to wit, on the 29th day of January, A. D. 1884, a transcript of the record from the chancery court of Copiah county in the above-styled cause was filed in the office of the clerk of said circuit court, and is in the words and figures following, to wit:

2 THE STATE OF MISSISSIPPI, *Copiah County:*

Proceedings before the chancery court of Copiah county, in said State, at the Jan'y term thereof, A. D. 1884.

The Honorable E. G. Peyton, chancellor, pres'd'g.

THE STATE OF MISSISSIPPI, *Copiah County:*

Chancery Court. July Term, 1883.

W. P. WARE, a Citizen of said State & County, Complainant,
v.
JAMES H. ALLEN, a Citizen of and Having His Post Office at New Orleans, in the State of Louisiana; T. H. West, a Citizen of and Having His Post Office at St. Louis, in the State of Missouri, and J. C. Bush, a Citizen of and Having His Post Office at Mobile, in the State of Alabama, Who are Partners as Cotton Factors in New Orleans, Louisiana, under the Firm Name of Allen, West & Bush, and L. B. Harris, George S. Dodds, and Mrs. C. A. Ware,
3 all of Hazlehurst, in said County of Copiah, Partners There as Merchants under the Firm Name of Harris, Dodds & Co., and Mrs. R. B. Mims, a Citizen of the County of Copiah and State of Mississippi, Defendants.

To the chancery court of said county:

The complainant shows to the court that said firm of Allen, West & Bush, on November 7th, 1881, signed and delivered to him their written promise, a copy of which is herewith filed as "Exhibit A," whereby they promised ninety days thereafter to pay him or order $10,000 for two notes of T. P. Ware for $5,000 each, provided they were not "defeated" in the suit against T. P. Ware, in which case (of such defeat) said promise to be void; that thereupon com-

plainant handed them the said two notes of T. P. Ware, duly endorsed, and that they were not defeated in their suit against said T. P. Ware, but realized from it a large sum of money; whereupon said promise became a valid obligation to complainant, and that it remains due and unpaid and they refuse to pay any of it;
4 that they are non-residents of the State of Mississippi and reside and have their post office as hereinbefore set forth, but have debts due them from the said Harris, Dodds & Co. and Mrs. R. B. Mimms, who are residents of said State of Mississippi, residing as aforesaid. Now, to the end that the debts due from said resident defendants to said non-residents may be subjected to satisfaction of complainant's demand by proceedings in attachment—

Complainant prays that said non-resident defendants be made parties by publication and said resident defendants by proper process, and that all be made to answer this bill on oath, fully, and in detail, the said residents to say what they owe said Allen, West & Bush, and, at the final hearing, that they be decreed to pay the same to complainant, and that said Allen, West & Bush be decreed to pay any balance due on said promise to complainants, or, if mistaken in the relief prayed, then that the court will decree such other or further relief as may be equitable and just, *and* &c.

CALHOON & GREEN, *P. Q.*

5 THE STATE OF MISSISSIPPI, *Copiah County,* } *ss:*

Before the undersigned, chancery clerk of said county, came W. P. Ware, who, being duly sworn, made oath that the statements of the foregoing bill are true.

W. P. WARE.

Sworn to and subscribed before me this Feb'y 21st, 1883.

J. M. NORMAN, *Clerk.*

EXHIBIT "A" TO BILL.

Copy.

NEW ORLEANS, *Nov. 7th,* 1881.

Ninety days after date we promise to pay W. P. Ware or order ten thousand dollars for two notes of T. P. Ware for five thousand dollars each, dated August 21, '81, one on demand & one at 30 d'ys, provided we are not defeated in the suit against T. P. Ware; if so, this note is void.

Yours truly,

(Signed) ALLEN, WEST & BUSH.

Bill and Exhibit "A" filed and sum's issued, and notice to non-residents handed to O. H. Johnson, editor of "The Signal,"
6 for publication, and copy mailed to each to their respective P. O. named in the bill.

Feb'y 21st, 1883.

J. M. NORMAN, *Clerk.*

Citation.

The State of Mississippi to James H. Allen, of New Orleans, Louisiana; T. H. West, of St. Louis, Missouri, and J. C. Bush, of Mobile, Alabama, partners under the firm name of Allen, West & Bush:

You are commanded to appear before the chancery court of Copiah county, in said State, on the first Monday of April, 1883, at rules, to defend the suit in said court of W. P. Ware, wherein you are defendants.

Feb'y 21st, 1883.

J. M. NORMAN, *Clerk.*

THE STATE OF MISSISSIPPI, *Copiah County:*

Personally appeared before the undersigned, circuit clerk in and for said county, Oscar H. Johnson, publisher of the Copiah Signal, a newspaper printed and published in the town of Hazlehurst, Copiah county, Mississippi, who, being duly sworn, deposes
7 and says that the advertisement of which the annexed is a copy was published in said newspaper on the dates specified below, to wit:

No.	Vol.	Day of week.	Day of month.	Year.
3	2	Friday.	Feb'y 23d	1883
4	"	"	March 2nd	"
5	"	"	" 9th	"
6	"	"	" 16th	"

Sworn to and subscribed before me this 26 day of June, 1883.

E. W BRAWN, *Clerk.*

Filed June 26th, 1883.

J. M. NORMAN, *Clerk.*

THE STATE OF MISSISSIPPI, *Copiah County,* } *ss:*

To the sheriff of Copiah county, Greeting:

We command you to summon Mrs. R. B. Mimms & L. B. Harris, Geo. S. Dodds, & Cynthia C. Ware, of the firm of Harris, Dodds & Co., if to be found in your county, to be and appear before the chancery court of said county, at rules thereof, to be holden at the court-house, in the town of Hazlehurst, on the first Monday of April, 1883, *there*
and there to answer the bill of complaint of W. P. Ware this
8 day filed in said court against them and Allen, West & Bush, and further to do and receive whatever our said chancery court may consider or decree in this behalf. Herein fail not under the penalty of one hundred dollars, and have you then and there this writ.

Witness my hand and seal of said court this 21st day of February, A. D. 1883.

[SEAL.] J. M. NORMAN,
Chancery Clerk.

The nature and object of this writ are: It is an attachment in chancery to subject any debt you may owe Allen, West & Bush to the demand of W. P. Ware, who sues for $10,000.

J. M. NORMAN, *Clerk.*

Executed on L. B. Harris, Geo. S. Dodds, & Mrs. Cynthia A. Ware by delivering to each of them a true copy with the endorsement thereon this Feb'y 24th, 1883.

T. J. HARGRAVE, *She'ff.*

Executed on Mrs. R. B. Mimms by copy delivered Feb'y 23d, 1883.

T. J. HARGRAVE, *She'ff,*
Per JORDAN, *D. S.*

9 THE STATE OF MISSISSIPPI, *Copiah County:*

Chancery Court.

W. P. WARE, Complainant,

vs.

ALLEN, WEST & BUSH *et al.*, Defendant-.

James H. Allen, Thomas H. West, & J. C. Bush, as partners doing business under the firm name and style of Allen, West & Bush, who answer separate and apart from their codefendants, come, and for their answer to the bill of complaint of W. P. Ware, or so much thereof as they are advised it is necessary *as* material for them to answer, answering, most respectfully say: They admit their residence, their partnership, and business to be as stated in said bill of complaint. They admit the signing and delivery to complainant of the writing a copy of which is appended to complainant's bill of complaint, marked Exhibit "A," but deny that it imposed any moral or legal obligation on *their* respondents to pay to complainant the sum of ten thousand — or any other sum, for the follow-
10 ing reasons: Complainant was, about the time of the execution of said writing, Exhibit "A" to complainant's bill, to wit, the 7th of November, 1881, and for some time previous thereto, doing business in Hazlehurst, Mississippi, under the name of T. P. Ware, and your respondents are informed and believe and so charge the fact to be that complainant had, a few years previous, been engaged in a large merchantile business in said town of Hazlehurst in his own name, but had failed, owing a large amount of money, and had commenced this business in the name of his brother, T. P. Ware, and was doing the business in the name of T. P. Ware, using said name simply as a shield or screen to deceive and defraud the

creditors of the said complainant, W. P. ——, and while this business was being so conducted and carried on by complainant in the name of T. P. Ware it became largely indebted to these respondents for money advanced and paid out to and for said merchantile house of T. P. Ware, at Hazlehurst, being run
11 as aforesaid, in the sum of about sixteen thousand and two hundred and forty-seven & $\frac{86}{100}$ dollars, after appropriating the cotton then on hand as credits on the said 7th day of November, 1881; and respondents now state that the original of Exhibit "A" to complainant's bill was executed under the following circumstances: Complainant came to New Orleans and represented to respondents that the house of T. P. Ware, that was so largely indebted to them, was about to fail, and that he, complainant, held T. P. Ware's notes for $10,000.00 (two notes for $5,000.00 each), the two notes described in the bill of complaint and in Exhibit A to said bill, and that if these respondents would pay off his notes or agree to do so he would have said T. P. Ware to make an assignment of all the stock of goods at Hazlehurst & also one at Crystal Springs, where T. P. Ware was running a store, and prefer your respondents for the
12 amount of their claim and include enough to cover the claim or pretended claim of said complainant, or that he would have T. P. Ware to sell to these respondents or any one they might name the said stock of goods for the purpose of securing respondents' claim with the ten-thousand-dollar claim of him, complainant, and would have T. P. Ware abscond and leave the county; and that his (W. P. Ware's) attorney assured him that either the sale or the assignment would unquestionably hold good in law, and he insisted that respondents should include these notes in the sale or assignment which T. P. Ware was to make, and that he, W. P. Ware, proposed to guarantee.

These propositions were accompanied with intimations, if not threats, that unless complainant's demands were complied with these respondents would probably lose their debt. Respondents being largely interested, and feeling assured the control of complainant over the goods, which constituted about the only assets out of
13 which they could collect their debts, and believing that T. P Ware was altogether under the control of W. P. Ware, they were anxious to come to some agreement with him by which they could prevent him from making some fraudulent disposition of the goods before they could have an opportunity to secure themselves. They telegraphed for their general attorney, Mr. J. M. Allen, & asked complainant to wait until he arrived before executing any papers about it, and promised complainant if their said attorney advised them that they could without risk make an assignment by which he could be secured in his money, or what he claimed was due him, respondents would do it, but that they were unwilling to take such a step without the advice of their attorney. Complainant assuring them that his attorneys had assured him they could assume his claim and charge it to T. P. Ware, and include it in their
14 (respondents') claim without any risk, but being in a great hurry about it complainant insisted that respondents should

take the note of T. P. Ware described in the bill, and gave him the paper of which Exhibit A is a copy, and that he, complainant, would go back to Hazlehurst and keep everything straight until J. M. Allen, the attorney for respondents, arrived, and that if he thought respondents would not be safe in trying to collect their amount from T. P. Ware by assignment or sale, or that respondents would be endangering their own by it, he, complainant, would then abandon it, and it was with this distinct understanding and agreement that this paper was given to complainant, and the suit referred to in the paper (Exhibit A) against T. P. Ware was because we were confident if a sale or assignment was made to us, including these notes or pretended notes of T. P. Ware to W. P. Ware, it would be attacked and attached by other creditors, and respondents would have to defend by suit
15 for the maintainance and recovery of the money claimed to be due on these notes from T. P. Ware to W. P. in a suit in which this amount was to be included; and respondents further represent and show that on the arrival of Mr. J. M. Allen, he, after be- *was* made fully acquainted with all the facts, advised them to have nothing to do with this claim of W. P. *vs.* T. P. Ware, and J. M. Allen then went to Hazlehurst to see him, the said complainant, and inform him of his determination about the matter; and on talking to complainant about it and informing him that he did not believe the claim could be sustained, and that he was unwilling for respondent to endeavor to do anything of the kind, complainant replied that W. P. Harris, of Jackson, Miss., was *as* his, complainant's, attorney, and that if Mr. J. M. Allen would go to see him and talk with him he, complainant, would release respondents
16 from the agreement contained in Exhibit A; and Mr. Allen, having great confidence in the legal ability and integrity of Hon. W. P. Harris, said he would abide by what he said, and went to see Judge Harris, and he said under the circumstances he could not advise these respondents to take an attempt to collect the claim of complainant; that they would be jeopardizing their own claim, and would be in great danger of losing it, and advised against it; of all of which complainant was duly informed, and the fact that the notes were not given back to complainant was not known for some time after by these respondents, the notes having been given to their said attorney, who had the management and control of the claim of respondents against T. P. Ware, who said they were by mistake mislaid and not known by him to be in his possession and which are herewith — this answer, with the en-
17 dorsement thereon, tendered back to complainant, and are filed herewith, to be returned, by order of the court, to complainant. Now, these are the circumstances under which the note or contract sued on was given, and respondents say that the notes given by T. P. Ware to W. P., if ever given at all, were *were* without consideration and represented a simulated debt; that that and the agreement of —, under which the writing sued on was executed — was obtained, was but a common scheme of fraud, in which the creditors of the business done in the name of T. P. Ware were to be the sufferers, and is therefore all void and fraudulent and of

no effect. Respondents deny that they ever sued for or collected one dollar or one cent from T. P. Ware in any suit in which these notes cut any figure or formed any part of the matter in dispute, and that the suit referred to in this paper was never
18 brought, but was abandoned under a subsequent agreement between complainant and these respondents.

And, having fully answered, respondents pray to be discharged, with their reasonable costs; and as in duty bound will ever pray, &c.

JAMES H. ALLEN.

JOHN M. ALLEN,
Solic't'r for Def'ts Allen, West & Bush.

Sworn to & subscribed by James H. Allen before me this 8th May, 1883.

[SEAL.] THOMAS GUYOL,
Not. Rep.

Filed May 9th, 1883.

J. M. NORMAN, *Clerk.*

$5,000.00. HAZLEHURST, MISS., *August* 21*st*, 1881.

On demand I promise to pay W. P. Ware or order the sum of five thousand dollars, for value received of him, same drawing 10% per annum from this date until paid.

T. P. WARE.

Pay to the order of Allen, West & Bush, of New Orleans.

W. P. WARE.

19 Filed May 14th, 1883.

J. M. NORMAN, *Clerk.*

$5,000. HAZLEHURST, MISS., *August* 21*st*, 1881.

Thirty days after date I promise to pay W. P. Ware or order the sum of five thousand dollars, for value received of him, drawing 10% per annum after maturity until paid.

T. P. WARE.

Pay to the order of Allen, West & Bush.

W. P. WARE.

Filed May 14th, 1883.

J. M. NORMAN, *Clerk.*

In the Chancery Court of Copiah County, Miss. July Term, 1883.

W. P. WARE
vs.
ALLEN, WEST & BUSH *et al.* } 1195.

To the chancery court of Copiah county:

This, the answer of L. B. Harris, Geo. S. Dodds, and Mrs. C. A. Ware, defendants, to the bill of complaint in this cause filed, & part-

ners, &c., under the firm name and style of Harris, Dodds & Co., answering thereunto, admits that said firm are indebted to
20 said Allen, West & Bush in the following manner: By two promissory notes, each for the sum of fifteen hundred dollars, executed and bearing date December 4th, 1882, and each bearing eight per cent. interest per annum from the date thereof, one of said notes payable October first, 1883, and the other payable January first, 1884.

L. B. HARRIS,
GEO. S. DODDS,
CYNTHIA A. WARE,
In Proper Person.

THE STATE OF MISSISSIPPI, *Copiah County:*

Personally appeared before me, J. M. Norman, clerk of the chancery — within and for the county and State aforesaid, L. B. Harris, Geo. S. Dodds, and Mrs. C. A. Ware, and, being by me duly sworn, on oath severally say that the above and foregoing answer is true.

L. B. HARRIS.
GEO. S. DODDS.
CYNTHIA A. WARE.

Sworn to and subscribed before me this 23d day March, 1883.

J. M. NORMAN, *Clerk.*

21 Filed March 23rd, 1883.

J. M. NORMAN, *Clerk.*

THE STATE OF MISSISSIPPI, *Copiah County:*

W. P. WARE *vs.* ALLEN, WEST & BUSH.

To the chancery court of Copiah county, July term, 1883:

Personally appeared before the undersigned, justice — peace in and for the county of Copiah, State aforesaid, Mrs. C. F. Mims, who, being duly sworn, on oath says, in answer to the writ of garnishment served on her in the above-stated cause, that she was indebted to the said defendants, Allen, West & Bush, at the date of the service of said writ of garnishment on her in the sum of about nine hundred dollars, and has not been indebted to them since, and is now indebted to them in the said sum of about nine hundred dollars; that she *has* had no effects of said defendants in her hands or possession when said writ of garnishment was served on her, has had no effects of said defendants in her hands or possession
22 since, and has none now in her hands or possession, and she knows of no other person indebted to said defendants or who has any effects of theirs in their hands or possession. Having fully answered, prays to be dismissed with costs.

C. F. MIMS.

Sworn to and subscribed to before me this 2nd day of April, A. D. 1883.

JOHN TERRY, *J. P.*

Filed April 4th, 1883.

J. M. NORMAN, *Clerk.*

Copiah Ch. C't, to July Term, 1883.

W. P. WARE *v.* ALLEN, WEST & BUSH *et als.*

Comes the complainant and moves the court to strike from the files the papers purporting to be the answer of James H. Allen, Thomas H. West, and J. C. Bush, and for *pro confesso* against each of them, because it does not appear as to the said West and Bush that there was any attempt made to verify its statement by their oaths, and as to the said Allen it does not appear that it was
23 verified by oath as the law requires.

CALHOON & GREEN,
For the Motion.

Filed June 26th, 1883.

J. M. NORMAN, *Clerk.*

W. L. WARE
vs } 1195.
ALLEN, WEST & BUSH *et al.*

The motion of the complainant to strike from the files the paper purporting to be the answer of James H. Allen, Thomas H. West, and James C. Bush and for *pro confesso* against each of them, because it does not appear, as to said West & Bush, that there was any attempt made to verify its statement by their oath, and, as to the said Allen, it does not appear that it was verified by oath, as the law requires, is by the court overruled as to said James H. Allen and sustained as to the said Thomas H. West and James C. Bush. It is thereupon ordered by the court that complainant's said bill of complaint and the allegations and charges therein written by, and
24 the same are hereby, taken as confessed by the said Thomas H. West and James C. Bush.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Personally appeared before me, James M. McKee, clerk of the circuit court of the United States for the southern district of Mississippi, John M. Allen, agent and attorney for Allen, West & Bush, merchants, of the city of New Orleans and State of Louisiana, citizens of the State of Louisiana, who, being duly sworn, says that T. P. Ware, citizen of the State of Mississippi, resident in said southern district of Mississippi, is justly indebted to the said Allen, West & Bush in the sum of about ($18,000) eighteen thousand dollar-; that T. P. Ware has property or rights in action which he conceals and unjustly re-

fuses to apply to the payment of his debts, and that he has assigned or disposed of or is about to assign or dispose of his property
25 or rights in action or some part thereof, with intent to defraud his creditors; that he hath converted or is about to convert his property into money or evidences of debt, with intent to place it beyond the reach of his creditors.

JOHN M. ALLEN,
Agent & Attorney for Allen, West & Bush.

Subscribed and sworn to before me this 12 day of November, A. D. 1881.

J. M. McKEE, *Clerk.*

I, Jas. M. McKee, clerk of the circuit court of the United States for the southern district of Mississippi, do hereby certify that the within is a true and perfect transcript of the affidavit for attachment in the cause therein stated, filed in my office on the 12th day of November, A. D. 1881, as the same now remains of record in my office.

Given under my hand and seal of said court this 29th December, A. D. 1883.

[SEAL.] JAS. M. McKEE, *Clerk.*

26 Filed as evidence this 31st day of Dec'r, A. D. 1883.

J. M. NORMAN, *Clerk.*

THE STATE OF MISSISSIPPI, *Copiah County:*

In the Chancery Court of said County.

To the Hon. E. G. Peyton, chancellor of the district chancery court of the State of Mississippi:

This the petition of L. B. Harris, Geo. S. Dodd, and Mrs. Cynthia Ware, partners and merchants in trade, doing business under the firm name and style of Harris, Dodds & Co., all residents of the county of Copiah, in the State of Mississippi, shows that W. L. Ware, on the 21st day Feb'y, 1883, filed his bill in the chancery court of said county against Allen, West & Bush, merchants, &c., to collect of them a certain sum of money therein specified; that petitioners are made parties to said bill and garnisheed as to their indebtedness to said Allen, West & Bush; that petitioners answered
27 said bill, admitting an indebtedness to said Allen, West & Bush, evidenced by two promissory notes, each executed Dec. 4th, 1882, & each for $1,500—one payable Oct. 4th, 1883, and one payable January 1st, 1884—each bearing 8 % interest per annum from the date thereof; that the note first due as aforesaid petitioners desire to pay into the hands of the clerk of said court the amount thereof, together with the interest thereon, which amount, principal and interest, amounts to the sum of $1,613.37, the said sum to remain in the hands of said clerk to await the result of said suit or until the further order of this court. Petitioners pray for an order

authorizing them to pay said sum to said clerk, and that said clerk be required to give petitioners a receipt therefor; and, as in duty bound, &c.

HARRIS, DODD & CO.

Filed October 15th, 1883.

J. M. NORMAN, *Clerk.*

28 W. P. WARE

vs.

ALLEN, WEST & BUSH; HARRIS, DODDS & Co, Garnishees.

On the petition of Harris, Dodds & Co., this day presented, to pay into court the amount due by them as garnishees, it is ordered, adjudged, & decreed that they do pay the said sum of $1,613.37, due by them as aforesaid, to the clerk of this court, and that the clerk be, and is hereby, directed to give his receipt for the amount so paid to the said Harris, Dodds & Co. Ordered and adjudged this the 15th day Oct., 1883.

E. G. PEYTON, *Chancellor.*

U. STATES OF AMERICA, *Southern District of Mississippi:*

U. S. Circuit Court. May Term, 1882.

ALLEN, WEST & BUSH, Pl'ffs, *vs.* T. P. WARE, Def'ts.

29 James H. Allen, Thomas H. West & J. C. Bush, partners in trade under the firm name and style of Allen, West & Bush, doing a commission & cotton factorage business in the city of New Orleans, in the State of Louisiana, plaintiffs, by their attorney, complains of T. P. Ware, a citizen of Copiah county, in the State of Mississippi, who has been summoned to answer by attachment in an action of assumpsit, for that whereas heretofore, to wit, on the 18 day of April, 1882, the said defendant was indebted to said plaintiffs in the sum of sixteen thousand five hundred & sixty-two & $\frac{85}{100}$ dollars for money paid out and expended for the said defendant by the said plaintiffs at the special instance and request of said defendant, and the sum of $16,562.85 for money paid out and expended for the said defendant by plaintiffs at the special instance and request of said defendant; and in the sum of $16,562.86 for money before that time paid out and expended by the said plaintiffs for the use
30 of defendant at his special instance and request, and the sum of $16,562.86 for money paid out to other parties by said plaintiffs at the special instance and request of the said defendant; and, being so indebted, the said defendant afterwards, to wit, on the day and year aforesaid, in consideration of the premises, did then and there undertake and promise to pay said several sums of money unto said plaintiffs on request; yet, although often requested, said de-

fendant — not paid said several sums of money or any part thereof, to plaintiffs' damage $18,000; wherefore they sue.

JOHN M. ALLEN,
Attorney for Pl'ffs.

Endorsed: Filed May 2, 1882. J. M. KcKee, clerk.

And afterwards, to wit, on the 3rd day of June, A. D. 1882, the same being a day of a regular term of the circuit court of the United States for the southern district of Mississippi, the following
31 proceedings were had and entered of record upon the minutes of said court in the words and figures following, to wit:

ALLEN, WEST & BUSH *v.* T. P. WARE.

This day came the plaintiffs, by attorney, and the defendant having failed to file a plea traversing the allegations set out in the affidavit for attachment, it is therefore ordered by the court that the default of the defendant be entered herein, and it is therefore considered by the court that said attachment was rightfully sued out.

ALLEN, WEST & BUSH *vs.* T. P. WARE.

This day came the plaintiffs, by attorney, and the defendant, though duly served with process, came not, but wholly made default herein; it is therefore considered by the court that the plaintiffs do have and recover of the defendant the sum of $16,562.86, being
32 the amount claimed in plaintiffs' declaration, with interest from this date until paid, and also the costs of this cause until paid, for which let execution issue; and it appearing to the court that the above judgment in the attachment issue, as well as on the debt, was taken in this court on the 29th day of May, 1882, but not entered by the clerk, it is therefore ordered that the same be now taken and held as if entered on said day.

I, James M. McKee, clerk of the circuit court of the United States for the southern district of Mississippi, do hereby certify that the foregoing four pages contains a true and full transcript of the declaration filed in said court on the 2nd day of May, A. D. 1882, by the plaintiffs in the cause then pending in said court, wherein Allen, West & Bush — plaintiffs, and T. P. Ware — defendant, as well as the judgments rendered by said court and entered of record
33 on the minutes of said court in said cause, on the day therein mentioned, as fully as the same now remains of record in my office.

Given under my hand and seal of said court this Dec. 22, 1883.

[SEAL.] JAS. M. McKEE, *Clerk.*

Filed as evidence this 31st day of December, A. D. 1883.

J. M. NORMAN, *Clerk.*

Petition.

Petition for removal on the ground of citizenship, under the act of March 3rd, 1875, where the adversary parties are all citizens of different States, and all the plaintiffs or all the defendants unite — the petition for removal.

Petition for Removal to the Circuit Court of the United States, District of ——.

In the Chancery Court of Copiah County, State of Mississippi.

W. P. WARE, Complainant,

vs.

ALLEN, WEST & BUSH, Defendant-.

34 To the honorable the chancery court of Copiah county, State of Mississippi:

Your petition- respectfully show to this honorable court that the matter and the amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars; that the controversy in said suit is between citizens of different States, and that the petitioners — at the time of the commencement of this suit and still are citizens of the State- of *the States of* Louisiana, Alabama, and Missouri—that is, James H. Allen is a citizen of Louisiana, J. C. Bush is a citizen of the State of Alabama, and T. H. West is a citizen of the State of Missouri, & W. P. Ware, the complainant, is a citizen of Copiah county, Mississippi; and your petitioners offer herewith a good & sufficient surety for entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit and for paying all costs that
35 may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto; and they pray this honorable court to proceed no further herein, except to make the order of removal required by law and to accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for the southern district of Mississippi, and will ever pray.

JOHN M. ALLEN,
Attorney for Petitioner.

STATE OF MISSISSIPPI, }
County of Chickasaw, } *ss:*

I, John M. Allen, being duly sworn, do say that I am the attorney for the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true as I verily believe.

—— ——.

Subscribed by the said John M. Allen in my presence *by*
36 and by him sworn to this 5 day of Jan'y, A. D. 1884.

H. B. LACEY, *Clerk*,
By J. C. BRADY, *D. C.*

Filed the 10th day of Jan'y, 1884.

G. F. WOLFE, *Clerk.*

STATE OF MISSISSIPPI, *Copiah County:*

I, G. F. Wolfe, clerk of the chancery court in and for the county and State aforesaid, hereby certify that the foregoing twenty-four (24) pages and the fractional part of the twenty-fifth (25th) page contains a true copy and transcript of the proceedings had and the papers and records read in evidence on the trial in the cause first in this record written, together with the original appeal bond, hereto attached, a copy of which is now on file in my office.

Given under my hand and seal of said court this the 28th day of January, A. D. 1884.

[Seal of Chancery Court, Copiah County, Miss.]

G. F. WOLFE, *Clerk.*

37 Know all men by these presents that Allen, West & Bush, as principal, and John M. Allen, as sure*ties*, are held and firmly bound unto W. P. Ware in the penal sum of one thousand dollars, the payment whereof, well and truly to be made unto the said W. P. Ware, his heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents—

Yet upon these conditions: The said Allen, West & Bush having petitioned the chancery court of Copiah county, State of Mississippi, for the removal of a certain cause therein pending, wherein W. P. Ware is complainant and Allen, West & Bush defendants, to the circuit court of the United States for the southern district of Mississippi:

Now, if the said Allen, West & Bush, petitioners as aforesaid, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and
38 shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue,

Witness our hands and seals this 5th day of January, 1884.

ALLEN, WEST & BUSH, [SEAL.]
By JOHN M. ALLEN, *Att'y.* [SEAL.]
JOHN M. ALLEN. [SEAL.]

THE STATE OF MISSISSIPPI, *Chickasaw County:*

This day personally appeared before the undersigned official John M. Allen, who says on oath that he is worth ten thousand dollars over and above his exemptions & legal liabilities.

[SEAL.] H. B. LACEY,
Circuit Clerk.

Endorsed: Filed Jan'y 29, 1884. Jas. M. McKee, c'lk.

And afterwards, to wit, on the 9th day of Feb'y, 1884, the petition of Harris, Dodds & Co., garnishees, was filed in said circuit court, in the words and figures following, to wit:

To the Hon. R. A. Hill, judge of the United States court for the southern district of the State of Miss.:

This the petition of L. B. Harris, Geo. S. Dodds, & Mrs. C. A. Ware, partners and merchants in trade doing business under the firm name and style of Harris, Dodd & Co., all residents of the county of Copiah, in the State of Mississippi, shows that W. P. Ware, on the 21st day Feb'y, 1883, filed his bill in the chancery court of Copiah county against Allen, West & Bush, merchants, &c., to collect of them a certain sum of money therein specified; that petitioners are made parties to *suit* bill and garnished as to their indebtedness to said Allen, West & Bush; that petitioners answered said bill, admitting an indebtedness to said Allen, West & Bush, evidenced by two promissory notes, each executed Dec. 4th, 1882, & each for the sum of $1,500.00, one payable Oct. 4th, 1883, & one payable
40 Jan. 1st, 1884, each bearing 8% interest per annum from the date thereof.

Petitioners state that the note first due as aforesaid, together with the interest thereon, amounting to the sum of $1,613.37, was by petitioner-, on the 15th day of Oct., 1883, paid to the clerk of the chancery court of Copiah county, Miss., pursuant to an order by said chancery court on that day entered upon the minutes of said court, for which payment petitioners have the receipt of the clerk of said chancery court.

Petitioners state that the note due last as aforesaid they desire to pay—the principal and interest thereof—into the hands of the clerk of your said court, the said sum, when so paid, to remain in the hands of said clerk to await the result of said suit between
41 said Ware & said Allen, West & Bush or until the further order of this court.

Petitioners pray for an order authorizing and directing them to pay the sum of said note to the clerk of this court, and that said clerk be required to give petitioners a receipt therefor, & for a rule upon said Allen, West & Bush to deliver up to petitioners the two said promissory notes, & that the said Harris, Dodds & Co. be discharged with their costs, including a reasonable attorney's fee; & as in duty bound, &c.

HARRIS, DODD & CO.

Endorsed: Filed Feb'y 9th, 1884. J. M. McKee, cl'k.

And on said 9th day of Feb'y, 1884, an order was made by said court in said cause and entered of record in the words and figures following, to wit:

42 W. P. WARE
vs.
ALLEN, WEST & BUSH; HARRIS, DODDS & Co., Garnishees. } 372.

The petition of Harris, Dodds & Co., garnishees in the above-entitled cause, coming on to be heard and praying for an order & leave to pay into court the principal and interest of their promissory note, payable to said Allen, West & Bush, for the sum of $1,500.00, & payable Jan. 1st, 1884, it is ordered that they have leave & do pay the principal & interest of said note now due to the clerk of this court, and that said clerk be, & he is hereby, directed, upon such payment, to give his receipt for the amount so paid to said Harris, Dodds & Co.

It is further ordered that the said Allen, West & Bush deliver up to the said Harris, Dodds & Co. the two promissory notes described in their petition upon their compliance with this order, and upon which the said Harris, Dodds & Co. are hereby discharged as garnishees in the above cause.

Ordered & adjudged this 9th day of Feb'y, 1884.

R. A. HILL, *Judge.*

43 And afterwards, to wit, on the 22nd day of April, A. D. 1884, the defendants filed in the office of the clerk of said court the deposition of Tim. E. Cooper, which is in the words and figures following, to wit:

44 THE STATE OF MISSISSIPPI, *Copiah County:*

Chancery Court.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

Interrogatories to be propounded to Hon. T. E. Cooper, the answers to which, when given, to be read in evidence on the part of the defendant- in the trial of the above-styled cause.

Int. 1st. Are you acquainted with any of the parties to this suit; if so, which of them?

Int. 2. Where did you reside in 1879, 1880, and 1881?

Int. 3. How long have you known W. P. Ware?

Int. 4. Give an account, as near as you can remember, of the business or different businesses that W. P. Ware has been
45 engaged in in that time; whether or not he has failed in business, and, if so, what he did after such failure; give a history of his mercantile transactions, as far as you can, since you have known him, the sort of business he did, in whose name he did it, &c.

Int. 5th. If, in answer to the last interrogatory, you state that W. P. Ware has failed in business at Hazlehurst, Mississippi, state when, as near as you can, and state whether or not, after his said failure, you had any claim against him for collection, and in what capacity.

Int. 6th. If you ever heard W. P. Ware or T. P. Ware, in the presence of W. P. or both of them, say anything about whether or not T. P. Ware owed W. P. Ware any money or had received any money from said W. P. or was indebted to him in any way,
46 or had any of his, W. P.'s, money or effects in his hands, state when this was, what was said, and under what circumstances it was said, and how often, and whether or not the said parties were under oath when it was said, and if it was in any judicial investigation state the case or cases and the circumstances fully.

Int. 7th. If you know of anything else about this matter that could benefit either of the parties to this suit please state it.

JOHN M. ALLEN,
Att'y for Def'ts.

Complainant, W. P. Ware, objects and excepts to the 4th, 5th, 6th of the foregoing interrogations-in-chief as clearly and manifestly illegal, incompetent, irrelevant, and impertinent to the issue, and submits the following cross-interrogatories:

47 X Int. 1st. Specify what parts of your answer to the 4th interrogatory-in-chief are absolutely of your own personal knowledge, and what not, if any are not, and if your answer to that interrogatory fails to give dates give them now.

X Int. 2. If your answer to the 6th interrogatory-in-chief fails to give dates accurately give them now.

X Int. 3. State whether or not you can say, either from your own knowledge or from any statement of W. P. Ware or T. P. Ware, that T. P. Ware did not owe W. P. Ware on August 21st, 1881; refresh as to dates and be as accurate as possible.

X Int. 4. After refreshing your memory as well as you can say how long it was before August 21st, 1881, you ever heard T. P. Ware or W. P. Ware say or swear anything as to debts from either to the other or freedom from debt. Take time, consult records or
48 memoranda, & be accurate.

X Int. 5. State any thing or circumstance you may know, if you know any, throwing any light upon the presence or absence of collusion between Allen, West & Bush or either of them or their agents or attorneys or either of them and T. P. Ware or W. P. Ware in the attachment suit of November, 1881, in the United States circuit court for the southern district of Mississippi, of Allen, West & Bush *vs.* T. P. Ware.

CALHOON & GREEN, *P. Q.*

Ans. 1st. I am acquainted with Mr. Ware and with Mr. Allen, of the firm of Allen, West & Bush. I may have met in the office of the firm Mr. West or Mr. Bush; if so, I do not remember him.

Ans. 2. In Hazlehurst, Mississippi, until Oct'r, 1881, at which time I removed to Jackson.

49 Ans. 3. I think since the year 1871 or 1872; I cannot be definite as to the time of my first acquaintance with him.

Ans. 4. Mr. Ware was engaged in the merchantile business at Pine Bluff, in Copiah county, Mississippi, when I first knew him. A few years after this he was engaged in the same business at Gallatin. After that he moved to Hazlehurst. I think in 1876, where he was engaged in the same business. In Hazlehurst he was the sole proprietor of one store and was also a member of the firm of W. P. Ware and Company, the firm being composed of W. P. & T. P. Ware. I think it was in December, 1878, that attachments were sued out by the creditors of W. P. Ware and levied on the stock of goods, &c., contained in the store conducted by him individually. These attachments were also, some of them, executed by being
50 levied on his interest in the firm of W. P. Ware & Co.. Judgments were rendered in these cases to an amount far greater than the value of the goods attached. T. P. Ware filed his bill in the chancery court of Copiah county for a liquidation of the business of the firm of W. P. Ware & Co. He was appointed receiver and closed up the business, reporting that the assets of the firm has been exhausted in the payment of the firm debts, expenses of suit, &c. After this Mr. T. P. Ware commenced business in his own name in Hazlehurst, and W. P. Ware was engaged in this business. I do not know of my own knowledge what the character of his connection with the business was. In the testimony delivered by T. P. and W. P. Ware in the suit referred to hereinafter in answer to int. 6 they each stated that W. P. Ware was employed as a clerk by T. P. Ware and had no interest in the business. I believe the foregoing
51 answers detail all the merchantile transactions in which W. P. Ware has been engaged so far as I have personal knowledge on the subject. I do not know in what name the business carried on at Pine Bluff was conducted. Those at Gallatin and at Hazlehurst, of which I have spoken, were conducted either in the name of W. P. Ware or W. P. Ware & Co.

Ans. 5. The date of the attachments against W. P. Ware is given in answer to preceding interrogatory, according to the best of my recollection. A short time before these attachments were sued out I received quite a number of claims against him for collection, and probably received some after that time. I received them as an attorney-at-law and caused attachments to be sued out on a number of them, on which I recovered judgments.

Ans. 6. In one or more of the cases in which I had recov-
52 ered judgments against W. P. Ware I caused T. P. Ware to be summoned as garnishee. He answered that he was not indebted to W. P. Ware in any amount; that he had none of his effects in his hands or possession. I do not remember the style of any of the causes in which he was so summoned except that of Wheeler & Pierson *vs.* W. P. Ware. This was a judgment in the circuit court of Copiah county. T. P. Ware had been summoned as garnishee therein and had answered, as I have stated, that he owed W. P. Ware nothing. As attorney for Wheeler & Pierson I traversed this answer and introduced W. P. Ware and T. P. Ware as witnesses for

the plaintiff. I do not remember at what term of the court the issue so made up was tried. I saw yesterday in the hands of Mr. Allen, attorney for the defendants in this case, the original papers, from which it appears that the writ of garnishment was returnable
53 to the Oct'r term, A. D. 1879, of the circuit court of Copiah county, and the answer of T. P. Ware was filed at that term. I do not remember whether the issue was tried at that term or at the April term following. I believe it was at the latter term when the trial was had. W. P. Ware and T. P. Ware, testifying as witnesses for the plaintiff, stated that T. P. Ware was not indebted in any sum to W. P. Ware; that he had none of his effects in his hands; that he (W. P.) had no interest in the business conducted by T. P. Ware, but was employed as a clerk by T. P. Ware, and received wages as such. I do not remember all that was testified by these parties. I remember the foregoing as the material testimony on the issue involved.

Ans. to int. 7. I know of nothing

Answers to X Interrogatories.

54 I know, of my own knowledge, that W. P. Ware was engaged in business at the various places stated in answer to int 4. I know that he was a member of the firm of W. P. Ware & Co. and that T. P. Ware was the other member from statements made by both parties. By their statements in the testimony given by them on the issue tried *tried* in the cause referred to in direct interrogatory 6 I know that the attachments were issued in the cases controlled by me from having them issued. I know that the others were issued from having seen the writ and the judgments entered in the cases. I know that some of these attachments were levied on the interest of W. P. Ware, in the firm of W. P. Ware & Co., in the same way. I know that T. P. Ware filed the bill in chancery and made the report as receiver from having examined the papers. I know that the aggregate amount of the judgments exceeded
55 the value of the goods levied on from an examination of various judgments and a comparisen with the valuation of the stock as made by the officers, and from a general knowledge I myself had of the goods. The remainder of the answer explains itself. I do not know when Mr. Ware removed from Pine Bluff; I think in 1874 or 1875. I am not certain when he went to Hazlehurst, nor can I give dates. T. P. Ware began business with the stock of goods which had been attached as the property of W. P. Ware, he having bought them at the sheriff's sale or from the purchaser at such sale. I do not know at what time this business began; it was before September, 1879.

Ans. to X Int. 2. I have done so as far as it is possible. I cannot say that they are accurate.

Ans. to X Int. 3. I know nothing of the matter inquired
56 of. I have not heard either of the parties make such a statement.

Ans. to X Int. 4. I think it was at the April term, 1880, of the circuit court of Copiah county that the trial was had of the issue on the answer of the garnishee in the judgment of Wheeler & Pierson *vs.* W. P. Ware. The records are not accessible to me at this time and I therefore cannot answer this cross-interrogatory more definitely. I have no recollection of either of the parties having made any statement to me or having testified in regard to the same since the date of the trial; — of court of Copiah county will, I presume, furnish the desired information.

Ans. to X Int. 5. I know nothing of the matter inquired of in this cross-interrogatory.

TIM. E. COOPER.

Endorsed: Filed April 22, 1884. J. M. McKee, cl'k.

57 And on said 22nd day of April, 1884, the defendants filed in the office of the clerk of said court the deposition of James Reynolds, which is in the words and figures following, to wit:

58 Copy.

NEW ORLEANS, *Nov.* 9, '81.

W. P. Ware.

D'R SIR: We have received of you this day two (2) notes of T. P. Ware, both dated August 21, '81, one on demand for five thousand dollars and one at 30 dd. for five thousand dollars, both payable to order W. P. Ware.

Yours truly,

(Signed) ALLEN, WEST & BUSH.

Endorsed: Exhibit A A to deposition of J. R. Reynolds. (Seal.) Geo. A. Hero, commissioner.

STATE OF LOUISIANA, *City of New Orleans:*

In accordance with the annexed agreement of counsel in
59 the cause depending and undetermined in the chancery court of Copiah county, Mississippi, between W. P. Ware, as complainant, and Allen, West & Bush, as defendants, to take the deposition of James C. Reynolds, a resident of New Orleans, Louisiana, as a witness on behalf of defendants on the annexed interrogatories and cross-interrogatories therein propounded to him I, George A. Hero, a commissioner for the State of Mississippi, at New Orleans, Louisiana, duly commissioned and qualified and authorized to administer oaths and to take and certify depositions, did, on the fourteenth day of April, A. D. eighteen hundred & eighty-four, call and cause to be and appear at my office, in the city of New Orleans, State of Louisiana, the above-named James C. Reynolds, and, having first duly and solemnly sworn him according to law to testify to the truth, the whole truth, and nothing but the truth *as* regard
60 to the matters in controversy in the aforesaid — and to make true answers to the annexed interrogatories & cross-interroga-

tories, the said James C. Reynolds did thereupon testify and depose as follows:

To the first interrogatory said Reynolds answered: I reside in New Orleans, La. I am a clerk in the cotton factorage house of Allen, West & Bush; have been so engaged for seven years.

To the second interrogatory said Reynolds answered: I am.

To the third interrogatory said Reynolds answered: I was not present except at the last part of the interview.

To the fourth interrogatory said Reynolds answered: The interview occurred at the office of Allen, West & Bush, in New Orleans, La. James H. Allen & W. P. Ware alone were present during most of the interview, and I did not hear their conversation together until the last of the interview.

61 To the fifth interrogatory said Reynolds answered: As stated before, I was not party to the interview which took place between J. H. Allen & W. P. Ware except the last part of it.

To the sixth interrogatory said Reynolds answered: James H. Allen & W. P. Ware had been conversing together off and on during the day; late in tha evening they both came to my desk. James H. Allen said to me that he had made an arrangement with W. P. Ware to receipt to him for two notes of T. P. Ware's of five thousand dollars each and handed me the notes & directed me to write a receipt for them. I did so, and annex a copy of the receipt I then wrote, marked Exhibit A A. The original receipt is annexed to J. H. Allen's answers to direct interrogatory to him number four in the suit. After writing the receipt I handed it to W. P. Ware, and he made objections to same to J. H. Allen. W. P. Ware & J. H. Allen

62 then had further private conversation together, & just before the time for W. P. Ware to go to the train J. H. Allen directed me, in place of the receipt which had been given to W. P. Ware & which he returned me, to write the document which is the basis of this suit, & then Mr. Ware left.

To the seventh interrogatory said Reynolds answered: I did not know.

To the eighth interrogatory said Reynolds answered: I do not.

To the first cross-interrogatory said Reynolds answered: My recollection is that it was principally held on the front gallery of Allen, West & Bush's office and in their cotton-room; do not know where they stood on distances. All the conversation I heard was what took place over my desk about the receipt and this paper.

To the second cross-interrogatory said Reynolds answered: I wrote it & J. H. Allen signed it.

63 To the third cross-interrogatory said Reynolds answered: I know nothing, as I recollect nothing about seeing the document or the letter, as diligent search has been made for them, but they cannot be found, & none of the employers in the office have any recollection of seeing any such document.

To the fourth cross-interrogatory said Reynolds answered: I was never informed by T. P. Ware as to who was his commission mer-

chant for his Crystal Springs business. Allen, West and Bush were his factors for his Hazlehurst business.

To the fifth cross-interrogatory said Reynolds answered: I do not know.

To the sixth cross-interrogatory said Reynolds answered: I do not know.

To the seventh cross-interrogatory said Reynolds answered: I do not know, as I never had the least intimation of such a trans-
64 action being spoken of until I read it in these interrogatories. I never knew such a proposition was thought of.

To the eighth cross-interrogatory said Reynolds answered: I do not know.

To the ninth cross-interrogatory said Reynolds answered: I do not know.

To the tenth cross-interrogatory said Reynolds answered: The $10,000.00 paper was given according to an arrangement made between J. H. Allen & W. P. Ware, the particulars of which were entirely unknown to me at the time it was given, but I wrote it according to directions of J. H. Allen.

To the eleventh cross-interrogatory said Reynolds answered: That same day Jas. H. Allen directed me to write John M. Allen to come to New Orleans, but I cannot say whether it was before or after the $10,000.00 paper was written. I supposed it was in reference to the Ware business.

JAMES C. REYNOLDS.

65 STATE OF LOUISIANA, *City of New Orleans:*

I, George A. Hero, a duly appointed and qualified commissioner of the State of Mississippi, at New Orleans aforesaid, do certify that the above and foregoing deposition of James C. Reynolds was taken down under oath as aforesaid and reduced to writing by me; that said answers were by me read over to and approved by him, and that thereupon the above answers or depositions were sworn to and subscribed by said James C. Reynolds before me, at New Orleans, this April 14, 1884.

As witness my hand & seal.

[SEAL.] GEO. A. HERO,
Commissioner.

66 W. P. WARE *vs.* ALLEN, WEST & BUSH.

JANUARY 7TH, 1884.

Notice and commission waived, and following may all be mailed to George A. Hero, commissioner, &c., New Orleans, La., who may take and certify deposition of James Reynolds and mail same to James M. McKee, clerk cir. c't of the U. S. for southern district of Mississippi, and the same to be evidence in said cause, subject only to objections and exceptions as to relevancy and pertinency and for not being begun in time.

CALHOON & GREEN, *P. Q.*

THE STATE OF MISSISSIPPI, *Copiah County:*

Chancery Court.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

Interrogatories to be propounded to James C. Reynolds, the
67 answers to which, when *when* given, to be read in evidence by the defendant- on the trial of the above-stated cause.

Int. 1st. State where you reside, and what is your business, and how long you have been so engaged.

Int. 2. Are you acquainted with the parties to this suit?

Int. 3. State whether or not you were present at an interview about the 7th day of November, 1881, between W. P. Ware, the complainant in the above-styled cause, and J. H. Allen, a member of the firm of Allen, West & Bush and one of the defendants.

Int. 4. If you, in answer to the last interrogatory, *you* say you were present at such an interview state when it occurred, who was present, and what the conversation or interview was about.

68 Int. 5. If, in answer to the two last interrogatories, you answer that you were present at such an interview, and that it was in reference to the indebtedness of T. P. Ware to Allen, West & Bush and a claim of W. P. Ware that T. P. Ware was indebted to him, just state fully what was said by W. P. Ware at the time about his claim, when he said T. P. Ware became indebted to him, and how, and what propos-tion, if any, he made to Allen, West & Bush at the time. State fully all that was said by said W. P. Ware and James H. Allen at the time and on what condition, if any, the instrument sued on in this case, which reads in words and figures as follows, to wit:

NEW ORLEANS, *Nov. 7th*, 1881.

Ninety days after date we promise to pay to W. P. Ware or order ten thousand dollars for two notes of T. P. Ware for five
69 thousand dollars each, dated August 21st, 1881, one on demand & one at 3 d. s't, provided we are not defeated in the suit against T. P. Ware; if so, this note is void.

Yours truly,

(Signed) ALLEN, WEST & BUSH.

Was given.

Int. 6th. State fully all you know about this matter and what was said between the parties at the time.

Int. 7th. If you know what was intended to be meant by the words in said instrument, "provided we are not defeated in the suit against T. P. Ware; if so, this note to be void," state what it was.

Int. 8th. If you know of anything else that would be of any interest or benefit to either of the parties to this suit just state it.

JOHN M. ALLEN,
Att'y for Def'ts.

70 Complainant, W. P. Ware, objects and excepts to the 4th, 5th, 6th, and 7th of the foregoing interrogatories-in-chief as manifestly illegal, irrelevant, immaterial, and impertinent to the issue, and submits the following cross-interrogatories:

X Int. 1. If you testify to any interview between W. P. Ware and J. H. Allen about Nov. 7th, 1881, or at any other time, say where it was, in what room, where they stood or sat, where you stood or sat, giving distances, what you were doing, how you come to hear, who called your attention to the conversation, who commenced it, and state all you heard which you can remember with exactness.

X Int. 2. Who wrote the $10,000 note?

X Int. 3. What can you distinctly remember in that interview about Ware showing Allen a bill of sale from T. P. Ware to
71 Allen, West & Bush, to both the Crystal Springs and Hazlehurst stocks, prepared by Judge Harris, of Jackson? State all that was said about this by Ware and Allen, and tell anything you remember about a letter from Judge Harris to Allen, West & Bush, shown Allen by Ware, and what was said about it.

X Int. 4. Who was T. P. Ware's commission merchant for his Crystal Springs business? Was it not Ben. Gurson, & who — his factors for the Hazlehurst business? Were they not Allen, West & Bush?

X Int. 5. What was said at that interview about Ware suing Gerson, and what did he tell Allen he wanted to see Gerson for, and did he not leave to see Gerson, and did not Allen soon follow him out and did they not soon return together?

72 X Int. 6. What was said at that interview about Allen, West & Bush giving a 90 days' draft on their house in Mobile for $10,000 to W. P. Ware?

X Int. 7. In that interview was it not at one time agreed to or proposed by Allen to give the $10,000 90 days' draft of his New Orleans house on his Mobile house, and that his Mobile house was to charge this to T. P. Ware on the books of that, the Mobile, house as money by that house advanced to T. P. Ware? Tell all you know about this and how it came to be abandoned and a note substituted.

X Int. 8. What was said in that interview about Allen, West & Bush attaching T. P. Ware and about being furnished grounds for attachment by W. P. Ware?

X Int. 9. Can you say it was or was not agreed in that in-
73 terview that T. P. Ware was not to defend the attachment of A., W. & B. & was to consent to sale in bulk?

X Int. 10. What was the $10,000 note given for?

X Int. 11. After the $10,000 note was written did not James H. Allen direct you to wire John M. Allen to go to Hazlehurst at once; and what was that for?

CALHOON & GREEN, *P. Q.*

Endorsed: Filed April 22, 1884. J. M. McKee, clerk.

And on the said 22nd day of April, 1884, the deposition of James H. Allen, a witness for the defendant- in said cause, was filed in the office of the clerk of said court, and is in the words and figures following, to wit:

74 W. P. WARE *vs.* ALLEN, WEST & BUSH.

JANUARY 9TH, 1884.

It is agreed to waive notice and commission and that these questions be mailed or expressed to Geo. A. Hero, commissioner, New Orleans, La., and that he shall take and certify in form and according to strict rule the deposition of James H. Allen and mail it or express it sealed to James M. McKee, clerk cir. c't U. S., so. dist. of Miss., at Jackson, Miss., and that the same be evidence in said cause, subject only to objections or exceptions for relevancy and pertenency and because of delay in taking and commencing proceedings to take.

CALHOON & GREEN, *P. Q.*

THE STATE OF MISSISSIPPI, *Copiah County:*

Chancery Court.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

75 Interrogatories to be propounded to James H. Allen, one of the defendants in the above-stated cause, the answers to which, *were* given, to be read as evidence for the defendants in the above-styled case.

Int. 1st. Where do you reside and what is your business and where did you reside and what was your business about the 7th day of November, 1881?

Int. 2. Are you acquainted with W. P. Ware?

Int. 3d. Who is the business manager of the business of Allen, West, & Bush in the city of New Orleans?

Int. 4th. State whether or not you had any business transaction with W. P. Ware about the 7th day of November, 1881, which resulted in your giving him the instrument of writing which is the foundation of this suit; and, if so, state fully all the repre-
76 sentations made to you by said Ware to induce you to give said writing, under what circumstances it was given and what the consideration for giving it was, and in what condition, if any was given. State fully all about it.

Int. 5. If W. P. Ware made any representations to you about who his attorneys were and what they had advised as to what you could safely do in the matter, first state fully what he said about this.

Int. 6. State what was the condition of the account of T. P. Ware with the house of Allen, West & Bush at that time, and what was due Allen, West & Bush after the sale of all the cotton they had on hand belonging to T. P. Ware at the time.

Int. 7. If you know, explain what is meant in the writing
77 sued on in this case by the words "provided we are not defeated in the suit against T. P. Ware; if so, this note to be void."

Int. 8th. What is the suit against T. P. Ware there referred to?

Int. 9th. Was there or not ever any suit between Allen, West & Bush and T. P. Ware in which the notes of P. T. Ware to W. P. Ware ever figured in any way?

Int. 10th. State fully why Allen, West & Bush never attempted to collect the notes of T. P. Ware, transferred to them by W. P. Ware on the 7th day of November, if you know.

Int. 11th. State when W. P. Ware 1st claimed that you owed him anything in the obligation on which he has now sued you and what he said on that subject, if anything.

78 Int. 12th. If you know of anything more that you have not already told that would be of benefit to either of the parties to this suit just state it.

JOHN M. ALLEN,
Att'y for Def't.

Complainant, W. P. Ware, objects and excepts to the 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th of the foregoing interrogatories-in-chief as manifestly illegal, incompetent, irrelevant, and immaterial to the issue, and submits the following cross-interrogatories:

X Int. 1. Produce and file as an exhibit to your answer to this question a letter of Judge W. P. Harris to your firm handed you by W. P. Ware on the day you signed the $10,000 note, which is the basis of this suit.

X Int. 2. Produce and file as an exhibit to your answer to this question a bill of sale from T. P. Ware to Allen, West &
79 Bush of his Chrystal Springs and Hazlehurst stock or either prepared by W. P. Harris and handed you by W. P. Ware on the day you signed the $10,000 note, the basis of this suit.

X Int. 3. If you cannot produce the letter or bill of sale state why you cannot make diligent search for them before answering this.

X Int. 4. Where is that letter & where that bill of sale? If they were not preserved, why not? What is the custom of your house about preserving letters and important papers?

X Int. 5. Was there ever any other James H. Allen who was or is a member of the firm of Allen, West & Bush except yourself?

X Int. 6. Are not you, then, the same James H. Allen who delivered your deposition before Alfred Ingraham, commis-
80 sioner, on April 20th, 1882, for use in a case in the circuit court of Copiah county of H. T. Coltom & Co. *vs.* T. P. Ware?

X Int. 7. Was not your recollection of events as clear then as now?

X Int. 8. Who wrote the $10,000 note, the basis of this suit, and who signed it?

X Int. 9. Who was present at the interview between you and W. P. Ware on Nov. 7th, 1881; who heard the conference, and how do

you know that such person heard it, and who invited him to hear it, and how do you know he heard it?

X Int. 10. Were your firm not the factors or commission merchants for T. P. Ware as to his Hazlehurst business?

(Hiatus here in numbering by mistake.)

X Int. 17. Was not Ben. Gerson the commission merchants
81 of T. P. Ware as to his Chrystal Springs business?

X Int. 18. In the interview of Nov. 7th, 1881, did not W. P. Ware leave to go to the office of Ben. Gerson? Did you not follow him and overtake him near Gerson's office door and take him back to your office; and what did you do this for, and what did Ware tell you he was going to see Gerson about?

X Int. 19. In that interview of Nov. 7th, 1881, what was said about a 90 days' draft of your house on your Mobile house in favor of W. P. Ware, and how was your Mobile house to charge the payment of it, and what was the object of such draft, and what its consideration, and what was said about it?

X Int. 20. What was agreed on in that interview about T.
82 P. Ware's not defending your attachment suit and then agreeing to a sale in bulk?

X Int. 21. Did you not in that interview or soon after wire John M. Allen or cause him to be telegraphed to to go to Hazlehurst? If yea, produce a copy of that telegram as an exhibit hereto, and, if you cannot find such copy, state its contents, and state what instructions you gave John M. Allen to do in Hazlehurst. What did you send him there for or to do? File as exhibits hereto copies of all letters and telegrams from you or your firm to John M. Allen in relation to T. P. Ware or W. P. Ware or the business of the former between November 6th, 1881, and May 1st, 1881, and all letters or telegrams from him to you or your firm in that relation between said dates.

83 X Int. 22. Did you see John M. Allen personally or was he in New Orleans between Nov. 7th, 1881, and Nov. 12th, 1881; and, if yea, when, and what did you talk about?

X Int. 23. What did you send Alfred Goldthwaite to Hazlehurst to do, what instructions did you give him, and why did you give him letters of introduction to W. P. Ware and to Judge Mays? Was Judge Mays your lawyer? Did you not understand him to be the father-in-law of W. P. Ware and the legal adviser of T. P. Ware and W. P. Ware?

X Int. 24. What instructions did you give Goldthwaite in reference to a certain bill of sale executed to your firm by T. P. Ware in the spring of 1881; drawn and held possession of by Judge Mays? Did you not tell him to take under that bill of sale without
84 attaching if Judge Mays thought it safe to do so?

X Int. 25. Explain why Ware wanted you to have all the goods, to the exclusion of all other creditors, and what was the basis or reason for the perfect understanding between your firm and its attorneys and the Wares as to your attachment?

X Int. 26. Was not your conversation of Nov. 7th, 1881, with W. P. Ware private, and private at your own special instance, and did you not tell him you did not want any one to hear it?

X Int. 27. On overtaking Ware on his way to Gerson's did you not tell him to return with you to your office and you thought you could arrange the matter satisfactorily?

X Int. 28. What was the real consideration of the $10,000
85 note? Was Ware to do anything? Was there any understanding that he should furnish any grounds for attaching T. P. Ware or induce T. P. Ware not to defend your attachment and afterwards consent to a sale in bulk? Did you not, in fact, give the $10,000 note for the two notes of T. P. Ware with the view to include them in your attachment debt?

X Int. 29. Was it not agreed between you and W. P. Ware that as soon as John M. Allen, to whom you telegraphed, came to Hazlehurst the attachment was to be sued out?

X Int. 30. On Nov. 7th, 1881, was not your estimate to W. P. Ware of T. P. Ware's debt to your firm $11,000, and how was the cotton on hand estimated per bale, & at what average per bale was
86 it sold, and was not the increase of your estimate from $11,000 to $18,000, the amount you attached for, due solely to the fact that you estimated in the first instance the cotton on hand at $47 per bale, when it realized only $37 per bale as an average?

X Int. 31. How many bales of cotton of T. P. Ware did you sell between Nov. 7th and Nov. 12th, 1881, and at what average price per bale, and how many bales did you sell of his in any one day between those dates, selecting the day of the largest sales and append as an exhibit to your answer hereto a transcript of T. P. Ware's entire account with your firm? You need not trouble to produce this account if you shall say it is the same as that filed in your attachment suit begun against T. P. Ware Nov. 12th, 1881, or the same as that attached to your deposition in the case of H. T. Cottam &
87 Co. *vs.* T. P. Ware, referred to in a former interrogatory herein.

X Int. 32. Is it not true that on November 12th, 1881, your firm attached T. P. Ware for a debt on open account of about $18,000, and that he did not contest the grounds of this attachment, and that afterwards he agreed to a sale of the Hazlehurst stock of goods, the only stock levied on under that attachment, and that your firm bought that stock at that agreed sale?

X Int. 33. After buying that Hazlehurst stock at that agreed sale whom did your firm put in charge of it? What clerks or managers did your firm employ? Under what contract of wages? How long did your firm continue to own it, and did your firm not, about March 29th, 1882, sell it to G. L. Ware, a brother-in-law of
88 T. P. Ware, and W. P. Ware, and did you not give your deposition, referred to in cross-interrogatories 6 hereinbefore, in the trial of the claim of property in that stock set up by G. L. Ware in the case of H. T. Cottam & Co. *vs.* T. P. Ware?

X Int. 34. Is it not true that, subsequently to the levy of the attachment of your firm on T. P. Ware's Hazlehurst stock of goods,

your attorney, John M. Allen, Esq., through W. P. Ware, procured T. P. Ware to assign to your firm divers notes payable to him, aggregating over $1,500?

X Int. 35. Examine the paper below, marked Exhibit to X Int'y 35; say who made it out, when it was made out, and for what purpose and at whose request.

EXHIBIT TO X INT. 35.

List of Notes with Allen, West & Bush.

89	Note T. E. Groome, due 14 Dec., '80	66 94
	" J. S. Auding, 1–4 Jan'y, '81	178 95
Note	H. Nowell, 1–7 July, '81	20
"	E. F. Sojournes, 1–4 Oct., '81	36 67
"	Jessie Thompson, 1–4 Oct., '81	50
"	John Hodges, 1–4 "	27 50
"	W. A. Collins	90 60
"	John Smith, 8–11 Nov., '81	44 00
"	M. L. Ellis, 20 "	278 62
"	W. E. Holliday, 7–10 Dec., '81	550 16
"	J. L. Meade, 12 "	169 95
		$1,513 39

90 X Int. 36. Were any of the notes set forth in this exhibit passed to the credit of T. P. Ware on his account; and, if not, why not; and why do they not appear as credits on the account attached on if they do not so appear; and to whose credit do they appear on the books of your firm? And produce any showing the books of your firm—make of them as an exhibit to this answer.

X Int. 37. What amount did your firm realize from the notes just referred to?

X Int. 38. Did your firm ever address business envelopes to W. P. Ware, enclosing letters addressed to T. P. Ware? Has this been done more than once; has it been done more than twice? If done at all why was it done?

X Int. 39. Produce and file as an exhibit to this question the letter, or a copy of it, written by your firm to Judge W. P.
91 Harris, of Jackson, Miss., on the 14th day of November, 1881.

X Int. 40. Examine the letter below, marked "Exhibit to X Int. 40," and say who wrote it and where it was written, and whether it was authorized by your firm.

EXHIBIT TO X INT. 40.

J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *Nov.* 15, 1881.

T. P. Ware, Esq., Hazlehurst, Miss.

D'R SIR: In view of the fact that the various parties who have attached you will be after the notes & accounts which are due you, would it not be well for our agent, J. Brooks Allen, to come
92 at once to Hazlehurst & have you furnish him with a list of the accounts, &c., & have him at once garnishee every one of them, & keep other parties from molesting them, & thus greatly facilitate matters? We wrote to Judge Harris yesterday as we promised you, & have seen Yale & Bolings' man to-day.

Yours truly, ALLEN, WEST & BUSH.

(Here follows postscript as above.)

Bob Miller, of Hazlehurst, was here to-day; he professes to be a friend of yours & willing to help; says the other parties can garnishee the acc'ts, &c., & give much trouble.

X Int. 41. State all that was said at any time between you and W. P. Ware about his father, W. J. Ware, opening a business in Hazlehurst.

X Int. 42. Was it not at one time agreed between you and
93 W. P. Ware that W. J. Ware should pay you $8,000 and W. P. Ware deliver you back your $10,000 note for the stock of goods of T. P. Ware bought by you at marshall's sale?

X Int. 43. Examine the subjoined account and power of attorney pasted together and marked "Exhibit to X Int. 43" and say how the account came to be contracted, and if you ever saw the power of attorney before, and on whose suggestion the power of attorney was obtained.

EXHIBIT TO X INT. 43.

W. J. Ware in account with Allen, West & Bush.

1881.

Dec.	13.	To telegram to A., W. & Co.		1	20	72
"	"	" A., W. & Co., mdse.		640	50	"
Feb'y	13.	" loss, 300, March { 1236 / 1164 } 8 Feb'y		703	32	20
				1,345	02	

94 CREDITS.

		By cash, per W. P. Ware	700		72	1,120
1881.						
Dec.	13.	" profit, 400, M'ch 1215, 1214, 1229, 1230	163	50	69	250
	16.	" W. P. Ware, 6th Dec.	152	32	75	253
	"	" interest	285			
1882.						
Feb'y	13.	Transfer to W. J. and G. L. Ware, ac.	326	35		
			1,345	02	--	1,623

(NOTE.—The above account is mutilated and partly destroyed.—J. M. McKee, clerk.)

E. E.

New Orleans, 23d February, 1882.

STATE OF MISSISSIPPI, *Copiah County:*

Know all men by these presents that I, W. J. Ware, do hereby nominate, substitute, and appoint my son, W. P. Ware, of the county aforesaid, my agent and attorney-in-fact for me, and in my name to purchase, on credit or for cash, such goods, wares, and merchandise,
95 without stint or limit, as my said agent and attorney in his judgment may deem necessary, advisable, or proper; to establish for me and in my name in the town of Hazlehurst, county aforesaid, a first-class country merchantile house, with full power and authority for this purpose and to this end to sign my name to any bond, obligation, or promissory note for the payment of money contracted by him to be paid for such stock as he may purchase, which shall be binding and obligatory on me as if the same had been executed or made by me with my own proper hands, and to do all other acts for me and in my name as he may deem necessary, proper, or advisable to accomplish the purpose for which this authority is given, hereby ratifying and confirming all acts of my said agent and attorney done in pursuance of this authority.

In testimony whereunto set my hand & seal this 16 day of December, 1881.

Or to buy any real or personal estate that he may may see fit, or to sell same.

W. J. WARE. [SEAL.]

Witness:
T. P. WARE.

96 X Int. 44. Examine the annexed pencil memorandum, marked "Exhibit to 44th X Int;" say if you ever saw it before; who wrote it, and when it was written, and who wrote the words on it, "You owe at this time about $11,500, not including drafts." Explain all about this.

"EXHIBIT TO 44TH X INT."

J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, ——, 188–.

I hereby promise & guarantee that with $10,000.00, receipt of which I hereby acknowledge, I can pay and satisfy my creditors so I can go on in business. Should I fail to do so I will sell you my entire interest in my houses at Hazlehurst & Crystal Springs
97 at any time. You owe at this time about $10,500.00, not including drafts advised.

X Int. 45. Examine annexed letter, marked "Exhibit to Cross-Int. 45," and say whether it is a letter from your firm and why it was written.

"EXHIBIT TO X INT. 45."

J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *Nov.* 18, 1881.

Mess. W. A. Collins & Co., Hazlehurst, Miss.

D'R SIR: Please take notice that we hold & own your note for $90.60, dated Nov. 4, '81, & payable 1 day after date, to F. P.
98 Ware. You will at once remit us to pay this note & pay same to us & no one else.

Yours truly, ALLEN, WEST & BUSH.

X Int 46. Examine annexed letter, marked "Exhibit to X Int. 46," and say whether it is from your firm.

EXHIBIT TO X INT. 46.

J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *Dec. 5th*, 1881.

F. P. Ware, Esq., Hazlehurst, Miss.

D'R SIR: Yours 3d & 4th to hand & noted. You were mistaken about the February costing 1202; they cost 1203, as we told you at the time in the cotton exchange, and when we were telling
99 you the *the* purchase they were 1205. We will give you a sworn statement if you wish it & also one from the broker.

It was after 2 o'clock, so it was too late to wire you the 1 o'clock market. We will send you list of notes by another mail.

Yours truly, ALLEN, WEST & BUSH.

X Int. 47. What notes are referred to in the last foregoing letter as to be sent by "another mail?"

X Int. 48. Examine annexed letter and say whether it is from your firm. We mark it "Exhibit to X Int. 48." Was not the "Wednesday next" therein mentioned the day for the sale of the Hazlehurst stock of T. P. Ware by the U. S. marshal?

EXHIBIT TO X INT. 48.

100 J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *Dec.* 10, 1881.

Mr. T. P. Ware, Hazlehurst, Miss.

D'R SIR: We received a letter to-day from Mr. John M. Allen, at Nashville. We trust he will be at Tupelo in time to get our letter and telegram, which await him there, so as to be with you by Wednesday next.

Marchs were up to 31 to-day, but close at 19.

Yours truly, ALLEN, WEST & BUSH.

X Int. 49. Examine annexed letter, marked "Exhibit to X
101 Int. 49," and say whether it is a letter from your house, and why it was written.

EXHIBIT TO X INT. 49.

J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *Dec.* 20, 1881.

T. P. Ware, Esq., Hazlehurst, Miss.

D'R SIR: Please write down at once & authorize us to confess, independent, in your behalf in the matter of the attachment suit against Meyer, Weiss & Co. We spoke to your brother about it when he was here. The only object is to save considerable costs, which will be saved by this course.

Yours truly, ALLEN, WEST & BUSH.

102 X Int. 50. Examined annexed letter, marked "Exhibit to X Int. 50," and say if it is from your house, and why were you concerned about W. P. Ware's indebtedness?

EXHIBIT TO X INT. 50.

J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *Jan'y* 19, 1882.

W. P. Ware, Esq., Hazlehurst, Miss.

D'R SIR: Your favor 16th to hand & noted; will try & send you daily market reports at 12 m.

We have not had as yet any replies from the parties to whom we write concerning your indebtedness to them. We will
103 duly inform you when we hear from them.

Yours truly, ALLEN, WEST & BUSH.

X Int. 51. Examine annexed letter, marked "Exhibit to X Int. 51," and say if it is from your firm.

"EXHIBIT TO X INT. 51."

J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *Jan'y* 20, 1882.

W. P. Ware, Esq., Hazlehurst, Miss.

D'R SIR: Since writing you on yesterday we have heard from Messrs. M. D. Wells & Co. In reply to our letter they say:

"We are not inclined to sell out very cheap, but you may
104 make a proposition if you choose and we will reply."

As we do not know what you owe them & what you would propose to pay we would refer the matter to you.

Yours truly, ALLEN, WEST & BUSH.

P. S.—Later in the day we have gotten a letter from Skinner & Co., and they say, viz:

"We should like to have an offer from you for the claim of W. P. Ware. We shall not accept an offer on anything like the terms he settled with other creditors, 25c."

We give above for your information.

A., W. & B.

X Int. 52. How came your firm to be writing to the old creditors of W. P. Ware?

X Int. 53. Examine annexed letter, marked "Exhibit to X Int. 53," and say if it is from your firm.

EXHIBIT TO X INT. 53.

105 J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *Jan'y* 28, 1882.

W. P. Ware, Esq., Hazlehurst, Miss.

D'R SIR: We have just gotten a letter from Mess. McClung, Day & Riely & also one from Nugent & McWillie, their attorneys at Jackson, to whom they refer our letter. Nugent & McWillie write: "We will take 50 cts. on the dollar, principal & interest, and they also say that their clients (McC., D. & R.) must approve this offer."

Yours truly, ALLEN, WEST & BUSH.

X Int. 54. Examine annexed letter, marked "Exhibit to X Int. 54," and say if it is a copy — one received by your firm.

106 EXHIBIT TO X INT. 54.

(Copy.)

J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street, New Orleans.

BALTIMORE, *Feb.* 2, '82.

Messrs. Allen, West & Bush.

GENTLEMEN: Yours 23d Jan'y to hand. In reply we have to say that if the interest at the rate of 6% is added on the am't of the note since maturity & protest fees included we will then take (50) fifty cents on the dollar. This is the lowest & best we will do.

Resp'ly,

(Signed) SKINNER & CO.

X Int. 55. Produce a copy of the letter from your firm to which the above is in answer as an exhibit to your answer hereto.

107 X Int. 56. Examine annexed letter, marked "Exhibit to X Int. 56," and say if it is from your firm.

EXHIBIT TO X INT. 56.

J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *Feb'y* 11, 1882.

W. P. Ware, Esq., Hazlehurst, Miss.

D'R SIR: We have received a letter from W. D. Wells & Co. in reference to our enquiring of them whether your claim was an open ac. or note, & they simply say, "Our claim is $990.90 & interest."

Yours truly, ALLEN, WEST & BUSH.

X Int. 57. Examine annexed letter, marked "Exhibit to X Int. 57," and say if it is from your firm.

108 EXHIBIT TO X INT. 57.

J. H. Allen. T. H. West. J. C. Bush.

Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *May* 10, 1882.

W. P. Ware, Esq., Hazlehurst, Miss.

D'R SIR: Your favor 9th to hand & contents noted. In reply to your inquiry we beg to say that Mr. John M. Allen & Mr. J. B. Allen both expect to be in Jackson, Miss., about the 19th inst.

It is our opinion that the Wares would do well to secure Mr. J. M. Allen's legal services in the cases of theirs soon to come off. We have been called on for copies of every letter received by us from yourself & T. P. Ware & every letter mailed by us since we first commenced doing business with T. P. Ware. In some few
109 letters written by you for your brother, T. P. Ware, & in connection with his business, you speak of "me." As you were in your brother's employ as his clerk, we always understood such expressions to refer to T. P. Ware only.

It will be well for the Wares to be thoroughly prepared & well defended in every possible particular, for their enemies seem determined to give them all the trouble they can.

Yours truly, ALLEN, WEST & BUSH.

X Int. 58. Does not this letter refer to the litigation of G. L. Ware's claim to the Hazlehurst stock of T. P. Ware under his purchase from your firm?

X Int. 59. Produce and file as an exhibit to your answer hereto copies of all letters written by your firm in relation to the business of T. P. Ware or W. P. Ware during the year 1881 addressed
110 to Judge H. B. Mayes.

X Int. 60. Produce particularly and file as an exhibit to your answer hereto copies of any letters written to Judge H. B. Mayes during the month of November, 1881, by your firm.

X Int. 61. Examine the copy of a letter on next page, purporting to be from your firm to Judge H. B. Mayes, of date November, 7th, 1881, and marked "Exhibit to X Int. 61," and say whether it is or is not a true copy of a letter from your firm to said Mayes.

EXHIBIT TO X INT. 61.

Copy.

Harris, Dodds & Co., dealers in general merchandise.

NEW ORLEANS, *Nov.* 7, 1881.

Judge H. B. Mayes, Hazlehurst, Miss.

111 D'R SIR: Mr. Ware has been down to-day to see us and has talked over his matters with us, & says he will at once confer fully with you. This is a very important matter, & our Mr. Allen telegraphed for his brother, John M. Allen, to come here at once, & he expects him here to-morrow, so that he can go up to-morrow night to consult with you as to what had best be done in the matter. For fear, however, that Mr. J. M. Allen may not reach here in time to go up to-morrow night we have engaged Mr. Alfred Goldthwaite, a lawyer of this city, to go to Hazlehurst on the morning train to consult with you and to be ready should any action become necessary prior to Mr. John M. Allen's arrival. Whatever is done we want to do it strictly correct, legal, and binding in every particular, so that it cannot be upset by any possibility at
112 law or in any contingency. We also wire you to-night as an additional precaution: "If immediate action become necessary in the matter for which you have the papers you are authorized to act for us." This letter will be handed to you by Mr. Goldthwaite in person, to whom the letter introduces you.

Yours truly,

(Signed) ALLEN, WEST & BUSH.

P. S.—If bonds have to be given we presume they will be large, and Mr. Ware said he would assist our lawyer in arranging them. Mr. Ware & ourselves understand each other entirely in this matter. Mr. Goldthwaite will take statements with him

(Signed) A., W. & B.

X Int. 62. Was there not an agreement between you and W. P. Ware that your firm should pay his old debts and credit your
113 $10,000 note to him with the payments; and pursuant to this did you not write his creditors to learn how they would compromise?

STATE OF LOUISIANA, *City of New Orleans:*

In accordance with the annexed agreement of counsel in the cause depending and undetermined in the chancery court of Copiah county, Mississippi, between W. P. Ware, as complainant, and Allen, West & Bush, as defendant-, to take the depositions of Jas. H. Allen, a resident of New Orleans, Louisiana, as a witness on behalf of defendants on the annexed interrogatories and cross-interrogatories therein propounded to him, I, George A. Hero, a commissioner for the State of Mississippi at New Orleans, Louisiana, duly com-
114 missioned and qualified and authorized to administer oaths and to take and certify depositions, did, on this fourteenth day of April, A. D. (1884) eighteen hundred & eighty-four, call and cause to be and appear at my office, in the city of New Orleans, State of Louisiana, the above-named James H. Allen, and, having first duly and solemnly sworn him according to law to testify to the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the cause aforesaid and to make true answers to the annexed interrogatories and cross-interrogatories, the said James H. Allen did thereupon testify and depose as follows:

To the first interrogatory said Allen answered: I reside in New Orleans, Louisiana. My business is that of a cotton factor. I am a member of the firm of Allen, West & Bush. I resided in New
115 Orleans. I was engaged in the same business on November seventh, eighteen hundred & eighty-one.

To the second interrogatory said Allen answered: I am.

To the third interrogatory said Allen answered: I am.

To the fourth interrogatory said Allen answered: I had a business conversation with W. P. Ware on the seventh November, eighteen hundred and eighty-one, and he told me that it was impossible for T. P. Ware to go on in business; that he had a large amount of paper falling due which he was unable to meet, and that there were a large number of drummers at Hazlehurst representing T. P. Ware's creditors & liable to attach him at any time, and if they did so we were likely to lose our whole debt. He told me he had two notes of T. P. Ware of five thousand dollars each for
116 money he had loaned him when he had first gone into business; that if we would buy these notes from him he would have T. P. Ware to sell us both his stores at Hazlehurst and Crystal Springs and everything he had or make an assignment or do anything whereby we could save our debt and those two notes which he held of T. P. Ware. He said that T. P. Ware owed Ben. Gerson some money, and Ben. Gerson had offered him a large amount of money—I think five thousand dollars—to sell the Crystal Springs stock to him, and if we did not take these notes that he would have to sell to Ben. Gerson. I was very much afraid we were going to lose our whole debt and told W. P. Ware. We had both his and his brother's verbal & also the solemn written obligation, which was in the hands of Judge Mayes, at Hazlehurst, whereby
117 they promised to protect us in case of *im*mergency, as we had

let them have a large amount of money and been their friends, and that I was afraid I could not legally take those notes, and it would jeopardize our whole debt to make them part of our debt against T. P. Ware. He showed me a *pro forma* bill of sale or assignment purporting to be from Judge W. P. Harris, & he also had a letter purporting to be from Judge Harris, to whom addressed. I do not now remember saying that this sale or assignment drawn or suggested by this document, with these two notes of T. P. Ware of five thousand dollars each included, would be binding. I insisted that we could not possibly take these two notes unless our attorney, John M. Allen, would say that we could legally do so without
118 jeopardizing our claim. After talking about the matter off & on for several hours (as W. P. Ware left the office several times), and he telling me he had seen Ben. Gerson and that Gerson was anxious for him to sell him the Crystal Springs stock, but he said he did not want us to jeopardize our claim if these notes he held would do so, I then told him I would telegraph for our attorney, John M. Allen, and would send him to Hazlehurst, and if his attorney and ours would say that we could legally include these two notes in our claim against T. P. Ware we could do so, but not otherwise. He agreed to this, & just before the time for him to go to the train for Hazlehurst W. P. Ware said that he wanted some document to show our agreement in case our attorneys so agreed, as the whole matter was to be void unless they so agreed. We first
119 gave him a receipt for the two notes, which original receipt we annex, marked Exhibit A, but he said that was not satisfactory, as we made no promise in that in case our attorney and his agreed to include his claim in our account against T. P. Ware. We then hurriedly wrote the other paper, as it was near train time, which is the basis of this suit, but it was written on the same terms and understanding on which the above receipt was written—that the said paper was to be null and void and worthless unless we could include the two notes in the T. P. Ware debt and collect them—but as both his attorney and ours advised against including them they were never included in our account against T. P. Ware, and we have never tried to collect or collected one cent on them, and have always regarded them as W. P. Ware's paper & not ours, and soon
120 after our attachment we instructed our attorney, John M. Allen, to turn them over to W. P. Ware and take up the paper which is the basis of this suit.

To the fifth interrogatory said Allen answered: W. P. Ware stated that Judge Wiley P. Harris was his attorney, & he had an instrument of writing, which he said was drawn up by Judge Harris. I think it was a *pro forma* sale or assignment. My impression also is that W. P. Ware had a letter, purporting to be from Judge Harris, saying that a sale or an assignment drawn as this document suggested would be legal & stand the test of the courts.

To the sixth interrogatory said Allen answered: At that time T. P. Ware owed us thirty-one thousand seven hundred & seventy-three .61 dollars, with three hundred & thirty-two bales cotton on
121 hand to go to the credit of the account, and after the cotton

had been sold and credited T. P. Ware owed us seventeen thousand one hundred & twenty-two .72 dollars.

To the seventh interrogatory said Allen answered: W. P. Ware had two notes of T. P. Ware of five thousand dollars each, which he said was for money loaned to T. P. Ware by him when T. P. Ware first went into business at Hazlehurst, and that he wanted us to include them in our debt against T. P. Ware, and if we could legally hold them and collect them by sale or assignment or any other way, then we were to pay him, but W. P. Ware told us that unless his attorney and ours agreed that the notes were legal, and we could in law hold and collect them as part of our just debt against T. P. Ware, and if they were included in our debt, and
122 were thrown out by the court as illegal, then the paper we gave him was to be null & void just as if it had never been given.

To the eight- interrogatory said Allen answered: W. P. Ware told me that Judge Wiley P. Harris said that a sale or assignment with these notes included would be legal & would be sustained by the courts, but I knew with these notes included that there would be a hotly contested suit against their being allowed in any event, whether by sale or assignment or otherwise. My idea, and W. P. Ware said it was his idea also, based on the document & letter purporting to be from Judge Harris, in whose legal opinion I had great confidence, was that a sale or assignment including these two notes would be legal. W. P. Ware told me whatever was done the other creditors would be sure to attach as fraudulent, and he, W.
123 P. Ware, would have T. P. Ware to leave the State, and could also make the bond for us in Hazlehurst, which would be a very large one, to bond the goods, so that — the event of a sale or assignment being made to us and attached by the other creditors we could at once reopen the store & go on selling the goods and have the sale of said goods to go on uninterrupted during the attachment suit of the other creditors, and this was my idea of the suit referred to in the document in question.

To the ninth interrogatory said Allen answered: There was not.

To the tenth interrogatory said Allen answered: Our attorney, John M. Allen, told me that he and W. P. Ware's attorney, Judge Wiley P. Harris, both agreed that there was no possibility whatever of our sustaining a suit in law with these notes of T. P. Ware included, and that to include them in our claim would seri-
124 ously jeopardize the collection of our just debt against T. P. Ware.

To the eleventh interrogatory said Allen answered: I think it was somewhere near the 10th or 15th November, 1882, about a year after the failure of T. P. Ware and after we had sold out the stock of goods bought at Hazlehurst to Harris, Dodd & Co, W. P. Ware came to New Orleans and asked me if I recollected that paper I had given him when he was here before the failure of T. P. Ware. I told him I remembered the paper, and that he also remembered that there was no claim to be made on us whatever unless his lawyers and ours agreed that these two notes be included and collected

in our debt against T. P. Ware; otherwise that paper was null & void. That, as his attorney and ours had both advised against including them, they were not included in our debt against T. P. Ware,
and, as he had never once mentioned the matter to us, that he
125 knew very well that he had no possible shadow of a claim
against us in the matter. He said we ought to pay him something, for if it had not been for him we would have lost our whole debt. I told him that as we did not owe him one cent on his claim, and he knew it, that I would not give him the one-thousandth part of a cent for them, as I had fully carried out my part of the agreement for him, as I had promised to try and collect them for him if his attorney and ours had agreed that they could be collected, but, as they had both advised against it, he should at once have given up the paper to our attorney as he had agreed to do; and I told W. P. Ware we would never pay him a cent. He asked me to write to our attorney, John M. Allen, & ask him about it. We did so, and
wrote him, and John M. Allen wrote us he had no claim on
126 us whatever, and we wrote W. P. Ware in reference to the
matter January twenty-sixth, eighteen hundred and eighty-three, a copy of which letter we wrote we attached hereto, marked Exhibit B. We also wrote Calhoon & Green in reference to the same matter on February thirteenth, eighteen hundred & eighty-three, a copy of which letter we attach, marked Exhibit C.

To the twelfth interrogatory said Allen answered: On Dec. 19th, 1881, we were attached by the Mississippi Mills of Wesson, Mississippi, for funds in our hands of W. P. Ware's and an old judgment held by them against W. P. Ware. W. P. Ware had deposited a few hundred dollars with us in connection with some cotton futures he had gotten us to have bought and sold for him, but just before
this attachment he had drawn out part of it & had had the
127 balance credited to his father's, W. P. Ware's, account, so at the
time of this attachment he had no money and nothing whatever in our hands, which I swore to and annex hereto, the attachment and my answer to it, marked, respectively, Exhibits D, E. I also attach a letter from T. P. Ware, marked Exhibit F, stating that we had no effects of his in our hands whatever; I also took an oath in the Cotham case, which is filed in Jackson, Miss., in that suit, that we had no effects or credits anywhere of any shape at either of our houses belonging to any of the Wares, and I again swear that those answers were true. W. P. Ware knew I had answered under oath in both these cases, and in frequent conversation with me, when he was in this city, afterwards, he never once said or intimated that he had any claim against us whatever and we knew he had none, and the matter was never mentioned until about a year after the
paper was given.

128 To the first cross-interrogatory said Allen answered: I do
not know that Judge W. P. Harris wrote us a letter. If Judge Harris wrote us a letter and sent it by W. P. Ware it must have been retained by W. P. Ware, as we have never seen it since W. P. Ware was here, on November seventh, 1881. We remember seeing a letter purporting to have been written by Judge Harris, but do not

know whether it was addressed to us or to W. P. Ware or to T. P. Ware.

To the second cross-interrogatory said Allen answered: We have no such document and never had such document in our possession.

To the third cross-interrogatory said Allen answered: Have made made diligent search, but can find no such document. I have inquired, and neither the correspondent or any other clerk in the office has any recollection of seeing or knowing of any such documents having ever been in the office. W. P. Ware showed me a
129 *pro forma* bill of sale or assignment that he said was drawn by Judge W. P. Harris, & which he said that Judge Harris said would be legal; also a letter which he said was from Judge Harris, but as we have never seen them since they must have been retained by W. P. Ware. We are confident those documents would be decidedly to our advantage if they could be produced, and we trust W. P. Ware will produce them. Mr. Alfred Goldthwaite, the lawyer we sent to Hazlehurst the day after W. P. Ware was here, said he never saw the document or letter purporting to be from Judge Harris, & we are confident we would have shown them to him if they had been in our possession, as they bore directly upon the matters he went to Hazlehurst to look after.

To the fourth cross-interrogatory said Allen answered: I have no idea where they are, unless W. P. Ware has them. Our rule
130 is to preserve and file every business paper that comes into the office, according to the initial, month & year, and we scrupulously retain all such documents.

To the fifth cross-interrogatory said Allen answered: No.

To the sixth cross-interrogatory said Allen answered: I am.

To the seventh cross-interrogatory said Allen answered: I suppose so.

To the eighth cross-interrogatory said Allen answered: James C. Reynolds, our correspondent, wrote the note and I signed it.

To the ninth cross-interrogatory said Allen answered: Most of the conversation was between W. P. Ware & myself privately; nobody heard the most of it but he and myself. The writing was done by the correspondent, J. C. Reynolds, and I do not know what he heard.

To the tenth cross-interrogatory said Allen answered: We were.

To the seventeenth cross-interrogatory said Allen answered:
131 W. P. Ware told me that T. P. Ware's Crystal Springs house was shipping cotton to Ben. Gerson.

To the eighteenth cross-interrogatory said Allen answered: I remember doing nothing of the kind. W. P. Ware left our office several times & came back; told me he had seen Gerson, and my recollection is that W. P. Ware told me that Gerson was willing to gave him several thousand dollars—I am not sure of the exact amount, but think it was five thousand or ten thousand dollars—to have T. P. Ware to sell or make an assignment of his Crystal Springs house in his favor.

To the nineteenth cross-interrogatory said Allen ans.: W. P. Ware insisted upon our buying the two five-thousand-dollar notes of T.

P. Ware which, he held, and including them in our debt against T. P. Ware, as he said that his attorney said it could be legally done.

I was opposed to having anything to do with those notes
132 until I knew it could be legally done. W. P. Ware said if it could not be legally done he did not desire it to be done at all, so I told him, as I said before, that if our attorney & his agreed upon it we would do so, and would have the money placed to his credit with our house in Mobile, for he told us if our attorney & his recommended it & the money was placed to his credit here his old creditors would attach it. I think the placing the money to the credit of W. P. Ware with our Mobile house was a suggestion of W. P. Ware, should the attorneys recommend the changing the notes to T. P. Ware, crediting W. P. Ware, so as to prevent his old customers from attaching him here, but there never was any draft given him on our Mobile house or any other house.

To the twentieth cross-interrogatory said Allen answered: My recollection is that W. P. Ware was here before the failure of
133 T. P. Ware. He expressed himself as willing to do anything to get us to charge T. P. Ware with the two five-thousand-dollar notes & to credit him. The paper that purported to be from Judge Harris purported to be a *pro forma* sale or assignment. He told me that Judge Harris said that either one would be legal, and W. P. Ware's idea and mine was that one of these would be the legal steps his attorneys and ours would take to secure our debt. W. P. Ware expressed a willingness to do anything that he could to secure our debt provided we would include the ten thousand dollars in our debt, but nothing whatever was said about a sale in bulk, as nothing was then said or thought of it, as the legal course we then expected to take was by a sale or an assignment to us, as he said Judge Harris had recommended.

To the twenty-first cross-interrogatory said Allen answered:
134 I attach copy of telegram sent by me to John M. Allen, marked Exhibit G, which was the only communication to him between the dates mentioned, except conversations with him in reference to the Ware matters. John M. Allen came to New Orleans. I told him the whole of the conversation I had had with W. P. Ware. I told him I wanted him to go to Hazlehurst & see Judge Harris & the Wares, and if it was legal I wanted him to include the two notes of T. P. Ware & to buy the stock or have an assignment made or in some way to secure our debt against T. P. Ware, and also to secure W. P. Ware's $10,000.00 claim against T. P. Ware if it could be legally done through us.

To the twenty-second cross-interrogatory said Allen answered: Yes; and we talked about the Ware matters, in reference to securing the T. P. Ware debt, and also talked about the notes, as stated in my answer to cross-interrogatory twenty-one.

135 To the twenty-third cross-interrogatory said Allen answered: After W. P. Ware had come to New Orleans and had told me that T. P. Ware was liable to be attached at any time, and as he was owing us a very large debt, we were afraid the whole of it would be lost by the attachment of other creditors. We sent Mr.

Alfred Goldthwaite to be on the spot & assist Judge Mayes and gave him letters to Judge Mayes & the Wares. We gave these letters of introduction, as we thought it might become indispensibly necessary for him to act before our attorney, J. M. Allen, could arrive at Hazlehurst, and because the Wares had given us a written document, after we had loaned them a large sum of money, agreeing that they would protect us, and this document was deposited in Judge Mayes' hands as a mutual friend between the Wares & ourselves, as we have great confidence in Judge Mays' integrity & but little in the Wares'.

136 We knew Judge Mayes was W. P. Ware's father-in-law, but we had understood that W. P. Harris was the Wares' regular attorney, but we knew Judge Mayes did some business for them.

To the twenty-fourth cross-interrogatory said Allen answered: We instructed Mr. Alfred Goldthwaite to do nothing, unless it was absolutely necessary, before our regular attorney, John M. Allen, could arrive, but to keep us posted, and if it became absolutely necessary to act our idea was to buy the stocks or have an assignment made in our favor, as before stated.

To the twenty-fifth cross-interrogatory said Allen answered: We had a written obligation from the Wares, which was in Judge Mayes' hands, a copy of which we attach, marked Exhibit H, which was agreed upon by T. P. Ware & W. P. Ware in the summer of eighteen hundred & eighty-one, that, if we would assist them through

137 the summer with money, *that* they would protect us in every way possible, and we supposed they were trying to carry out their faithful pledge & agreement in this respect.

To the twenty-sixth cross-interrogatory said Allen answered: I recollect telling him nothing about our wanting it to be private; we were together alone most of the time, and I suppose, from the nature of the conversation, that it was the desire of us both that it should not be made public.

To the twenty-seventh cross-interrogatory said Allen answered: As stated in my answer to cross-interrogatory eighteen, I remember nothing about overtaking him on his way to Gerson's or asking him to return. He left the office several times and said he had been to Gerson's, and that Gerson had offered him several thousand dollars—I think $5,000.00 or $10,000—to sell him the T. P. Ware stock at Crystal Springs. He said if I did not do something on those

138 notes he could & would sell to Gerson. He spoke of the proposition of Ben. Gerson to buy out at a big price several times in our conversation, but I afterwards saw Ben. Gerson, and he told me there never was any such conversation between him & W. P. Ware; that he never said one word about buying him out, as he did not know that they were in a failing condition, and he told me that he lost $6,000 by T. P. Ware's failure.

To the twenty-eighth cross-interrogatory said Allen answered: As stated before, Ware's idea & mine, based on the *pro forma* sales or assignment purporting to be from Judge Harris and the letter he said was from Judge Harris, saying the documents drawn that way would be legal—our idea was that we could but save our debt and the professed debt of T. P. Ware to him in this way, but he said he

was willing to do anything by which we could secure our
139 debt and the debt he claimed T. P. Ware owed him, and he stated to me several times that if his attorney and ours did not agree that we could legally and safely include the debt he claimed against T. P. Ware in our debt against T. P. Ware he would not ask to have it so included; he also stated that there were several creditors of T. P. Ware at Hazlehurst who he was confident were going to attach him, & he would rather we would save our debt, as we had furnished them a large amount of money and been their friend & had agreed to give them time. Nothing was said about attaching and selling out in bulk, as when he was here we both thought we would try to save our debt by a sale or assignment, as we thought from Judge Harris' advice that that would be the most expedient way of saving our debt. I did not then know that when our attachment was made there could be a sale in bulk.

140 To the twenty-ninth cross-interrogatory said Allen answered: I telegraphed John M. Allen to come here; when he arrived I remember telling him nothing about suing out an attachment. I told him of W. P. Ware's conversation with me, and what Ware said that Judge Harris had said about a sale or assignment, and that our idea was that that — the most expedient & safe way of saving our debt. We furthermore told him if it was legal & safe for us to do so we wanted him to include two notes W. P. Ware had left us in our claim against T. P. Ware, but we told John M. Allen to exercise his own good judgment in what was best to be done to save our debt, as this was the matter for which we were working.

To the thirtieth cross-interrogatory said Allen answered: We made no such estimate as the state of the account shows; that on the seventh day of November, 1881, estimating the value of the
141 cotton on hand at forty dollars value per bale, T. P. Ware was owing on that date over eighteen thousand dollars. The cotton, however, brought an average of $46.10 per bale, so he did not owe us that much after the cotton had all gone to credit; so, instead of bringing thirty-seven dollars per bale, average forty-six $\frac{10}{100}$ dollars per bale; and when the cotton has all gone to credit he owed seventeen thousand one hundred & twenty-two $\frac{72}{100}$ dollars.

To the thirty-first cross-interrogatory said Allen answered: We sold one hundred and thirteen bales between the dates mentioned. We annexed to this a list of cotton sold on the dates mentioned, giving dates, number of bales sold, & prices, marked Exhibit I. The statement of account is the same as those referred to, which were sworn to & filed.

To the thirty-second cross-interrogatory said Allen an-
142 swered: About that time our attorney, John M. Allen, did attach T. P. Ware for about $18,000. In reference to other matters, I know nothing except what I have told, as I was not in the State.

To the thirty-third cross-interrogatory said Allen answered: Joe Brooks Allen was put in charge of it. We employed W. P. Ware as a manager, & enclose copy of contract under which he was employed at the time, marked Exhibit K. We think we owned it between

three and four months, and sold out to G. L. Ware, a brother of T. P. Ware, & W. P. Ware. I did, but don't remember what cross-interrogatory in that suit was, as the papers are filed in Jackson, Mississippi, & we have not got a copy.

To the thirty-fourth cross-interrogatory said Allen answered: I know nothing personally of this. John M. Allen sent us a list of notes he said the Wares had given him, but the time we do not know.

143 To the thirty-fifth cross-interrogatory said Allen answered: J. M. Hayes, at that time our book-keeper, made out the list. It was made out in New Orleans as a list of notes delivered to John M. Allen by the Wares. I suppose the list in question was made out at the Wares request.

To the thirty-sixth cross-interrogatory said Allen answered: Two amounts collected on these notes were paid & passed to T. P. Ware- credit, viz, sixty-five dollars collected from W. A. Collins & one hundred & fifty dollars collected from M. L. Ellis, as appears in the statement rendered in the Cotham case. The notes were forwarded to Joe Brooks Allen, at Hazlehurst, to try & collect them, and he collected one hundred and twelve $\frac{8}{100}$ dollars on J. S. Auding's note, twenty-five dollars on Graves' note, and one hundred and twenty-five $\frac{62}{100}$ dollars on M. L. Ellis' note. These last three amounts should have been credited to T. P. Ware's account

144 direct, & I thought until now had been done, but Joe Brooks Allen says they were credited to his account. I have had one book-keeper to credit these three said amounts to the account of T. P. Ware, as should have been done when first collected. J. B. Allen said that this was all that could be collected, as the parties said that most of the other notes had been paid before they were turned over to us.

To the thirty-seventh cross-interrogatory said Allen answered: I have given the amounts in my reply to cross-interrogatory thirty-sixth, which was four hundred & seventy-eight .48 dollars in all, which was credited to T. P. Ware & J. B. Allen's account, but is now all credited to T. P. Ware's account.

To the thirty-eighth cross-interrogatory said Allen answered: I don't remember of it having been done, but as W. P. Ware was the manager & director of the T. P. Ware business it might have

145 been done in the case of some matters to which we might have wanted to call his special attention to.

To the thirty-ninth cross-interrogatory said Allen answered: We annex a copy of our letter to Harris & Harris of November 14th, 1881, marked Exhibit H. We can find no copy of letter addressed to Judge W. P. Harris, but suppose this is the letter desired.

To the fortieth cross-interrogatory said Allen answered: This letter was written by our correspondent, & he had authority to do so. It was written in New Orleans, Louisiana.

To the forty-first cross-interrogatory said Allen answered: W. P. Ware told me that his father, W. J. Ware, of Alabama, was a man of considerable money & means, and was going to open a business in Hazlehurst.

To the forty-second cross-interrogatory said Allen answered: I never heard of any such proposition before or anything like
146 it before it in these interrogatories, as W. P. Ware never spoke of or mentioned the $10,000.00 document until about the middle of November, about a year after the transaction, as stated in my answer to interrogatory eleven.

To the forty-third cross-interrogatory said Allen answered: The account is the account of W. J. Ware, the father of T. P. Ware, with our firm, and W. P. Ware told us at the time that it was contracted at the request of his father. I have no recollection of seeing or hearing of the power of attorney before, but W. P. Ware may have shown it to me. I have never seen W. J. Ware, but we received some letters written in his name.

To the forty-fourth cross-interrogatory said Allen answered: The upper portion of this memorandum was written by our correspondent, J. C. Reynolds, & I suppose I have seen it before, & think it was the starting of a pencil memorandum of the agreement we
147 wanted the Wares to give us. The agreement that was formally made out was deposited with Judge Mayes, & a copy of same is attached to our answer to cross-interrogatory twenty-five. I do not know who wrote the words "You owe at this time about $11,500, not including drafts advised," as I do not recognize the handwriting.

To the forty-fifth cross-interrogatory said Allen answered: It was written by your correspondent for us, as we wanted to collect the note to credit the amount on debt due us by T. P. Ware.

To the forty-sixth cross-interrogatory said Allen answered: The letter is from our firm.

To the forty-seventh cross-interrogatory said Allen answered: I believe it to be the list of notes referred to in my answer to cross-interrogatory No. thirty-five. It was a list of notes to be sent; not the notes themselves.

To the forty-eighth cross-interrogatory said Allen answered:
148 The letter is from our firm. I think it was.

To the forty-ninth cross-interrogatory said Allen answered: The letter is from our firm. When the failure of T. P. Ware occurred we heard that Meyer, Weiss & Co. would have a balance in their hands belonging to T. P. Ware after his cotton was sold, and we attached them. We asked T. P. Ware to give the release, so as to save court costs and have as much money as possible to go to the credit of T. P. Ware.

To the fiftieth cross-interrogatory said Allen answered: The letter is from our firm. W. P. Ware came to New Orleans shortly before the date of this letter & told us there were debts hanging over him from his old failure of several years before, & requested us as a personal favor to him to write to certain parties according to a list he gave us and, without making any proposition, to ask them
149 what they would take for their claim, & as W. P. Ware was then clerking for us in Hazlehurst, in our store there, according to agreement, we had no hesitancy in granting his request, & wrote to the parties in his interest and at his request solely.

To the fifty-first cross-interrogatory said Allen answered: It is.

To the fifty-second cross-interrogatory said Allen answered: Because, as I have stated in my answer to cross-interrogatory fifty, W. P. Ware asked us to do so as a personal favor to him, as he wanted to compromise these old claims.

To the fifty-third cross-interrogetory said Allen answered: It is.

To the fifty-fourth cross-interrogatory said Allen answered: It is.

To the fifty-fifth cross-interrogatory said Allen answered: We annex copy of our letter, Jan. 23, 1882, to Mess. Skinner & Co., marked Exhibit N.

150 To the fifty-sixth cross-interrogatory said Allen answered: It is.

To the fifty-seventh cross-interrogatory said Allen answered: It is.

To the fifty-eighth cross-interrogatory said Allen answered: It does.

To the fifty-ninth cross-interrogatory said Allen answered: We annex copies of all letters called for, marked Exhibit C, & telegram, marked Exhibit P, the only one we find copies of, & all that we know was written.

To the sixtieth cross-interrogatory said Allen answered: The copies of all letters written by us to Judge Mayes November, 1881, is attached to my answer to cross-interrogatory fifty-nine.

To the sixty-first cross-interrogatory said Allen answered: It is a true copy.

To the sixty-second cross-interrogatory said Allen answered: No such agreement was ever thought or spoken of and no mention of the $10,000 paper was ever hinted to us by W. P. Ware after

151 the 7th November, 1881, when he first left us the notes, until about one year afterwards, and we supposed that he regarded that paper as entirely null & void—worthless—as it really was under our agreement & his, that it was to be worthless unless our attorneys & his both agreed to have us to charge it to T. P. Ware's debt and collect it, which was never done or attempted. To show conclusively that we were to pay nothing, all the parties to whom we wrote at Mr. W. P. Ware's request wrote us proposing to compromise, but we never paid or thought of paying them one cent, & only reported at his request what the parties had written, and as far as we know of these debts are all unpaid to this day, as we know of none of them being paid or compromised.

JAMES H. ALLEN.

152 STATE OF LOUISIANA, *City of New Orleans:*

I, George A. Hero, a duly appointed and qualified commissioner of the State of Mississippi, at New Orleans as aforesaid, do certify that the above and foregoing depositions of James H. Allen was taken down under oath as aforesaid and reduced to writing by me; that said answers were by me read over to and approved by him, and that thereupon the above answer or deposition *were* sworn to & subscribed by said James H. Allen before me, at New Orleans, this April 14th, 1881, as witness my hand & seal.

[SEAL.] GEO. A. HERO,
Commissioner.

153 Allen, West & Bush, cotton factors and commission merchants, 34 Perdido street.

NEW ORLEANS, *Nov. 7th*, 1881.

W. P. Ware, Esq.

D'R SIR: We have received of you this day two (2) notes of T. P. Ware, both dated August 21, '81, one on demand for five thousand dollars and one at 30 dd. for five thousand dollars, both payable to order W. P. Ware.

Yours truly, ALLEN, WEST & BUSH.

Endorsed: Exhibit A to Jas. H. Allen's deposition. (Seal.) Geo. A. Hero, commissioner.

154 Copy.

NEW ORLEANS, *Jan'y* 26, '83.

W. P. Ware, Hazlehurst, Miss.

D'R SIR: Your favor 25th to hand & noted. We have just this day received a letter from Mr. John Allen, as he has been absent from home. Mr. John Allen writes, of course, you are not entitled to one cent; that neither Judge Harris or Judge Calhoon will tell you that you are entitled to anything. As we told you when here, we are surprised at your making any such claim, as the paper was acknowledged to be worthless by us all, unless T. P. Ware make an assignment or sold out to us and the sale or assignment was sustained by the courts; but if our lawyers agreed that neither of these could be done the paper we gave was null & void. We can prove
155 these facts by several witnesses, as you know. We always done by you exactly what we agreed to do—as we tried to do with every one.

As we told you when here, if we legally or justly owe you or anybody else anything we are abundantly able to pay them.

Yours truly,
(Signed) ALLEN, WEST & BUSH.

Endorsed: Exhibit B to Jas. H. Allen's dep. Geo. A. Hero, commissioner.

Copy.

NEW ORLEANS, *Feb'y*, 13, '83.

Mess. Calhoon & Green, Jackson, Miss.

D'R SIR: Your favor 9th to hand & noted. A few days before T. P. Ware's failure W. P. Ware came to New Orleans & told us that he held T. P. Ware's note for ten thousand dollars, and as T.
156 P. Ware's creditors were pressing him he wanted to transfer T. P. Ware's notes to us, & he would get T. P. Ware to sell out to us or make an assignment in our favor, as T. P. Ware had plenty to secure both his debts & ours by a sale or assignment. We told him we feared it could not be legally done, but we would telegraph

our attorney, Mr. John M. Allen, & if he & Mr. Ware's attorney, Mr. W. P. Harris, said that we could legally buy T. P. Ware's notes and a sale or assignment by T. P. Ware would hold good in law & secure our debt we were willing to do so, but not otherwise, & we had serious doubts about it standing in law. Mr. W. P. Ware asked us to give him this paper which you hold, & if his attorney & ours did not approve of T. P. Ware's selling or assigning to us to cover our debt and the $10,000.00 notes which W. P. Ware held, then the paper we gave W. P. Ware was null and void and of no effect what-
157 ever, and was to be returned to us or distroyed, and W. P. Ware knows that both his attorney & ours advised against either the sale or assignment including the T. P. Ware notes given W. P. Ware, and said that we could not maintain either a sale or assignment. We were then forced to attach for our debt alone, as the request of W. P. Ware could not be legally complied with, and W. P. Ware knows that we have fully four witnesses to this whole affairs that the paper given him was entirely worthless if a sale or assignment was not made which included our debt & his notes, and that he promised to — up the paper long since, & never even intimated that he ever thought of asking a cent until a few weeks since. We send you a copy of a letter we wrote him in reply to his letter to us. We make this full explanation to you so that you may understand your case & client. You can tell him for us that we are
158 not easily bulldozed or blackmailed, & we need not try either; we know our rights & will maintain them. As we wrote Mr. Ware, we are fully responsible & ready & willing to pay what we justly owe, but are as fully determined not to pay what we do not owe, & no one but Mr. Ware could ever have thought of making any such claim as this.

Yours truly,

(Signed) ALLEN, WEST & BUSH.

Endorsed: Exhibit C to deposition of Jas. H. Allen. (Seal.) Geo. A. Hero, commissioner.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

THE MISSISSIPPI MILLS
vs.
W. P. WARE. } No. 4813.

Messrs. Allen, West & Bush, garnishee-, New Orleans.

You are hereby cited to declare on oath what property be-
159 longing to the defendant in this case you have in your possession or in what sum you are indebted to said defendant, and also to answer in writing under oath the interrogatories annexed to the supplemental petition, of which a copy accompanies this citation, and deliver your answer to the same in the office of the clerk of the

civil district court for the parish of Orleans within ten days after the service hereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Hon. A. L. Tissot, judge of the said court, the 19th day of Dec., in the year of our Lord 1881.

[SEAL.] J. BRANDAO,
Deputy Clerk.

Endorsed: Served a copy of the within citation and accompanying supplemental petition and interrogatories on Messrs.
160 Allen, West & Bush, garnishee-, through Jas. H. Allen, a member of said firm in person; ret. same day. John Korple, d'p sheriff.

Endorsed: Exhibit D to J. H. Allen's deposition. Geo. A. Hero. commissioner.

THE MISSISSIPPI MILLS
vs.
W. P. WARE. } No. 4813.

To the honorable the civil district court for the parish of Orleans:

The supplemental petition of "The Mississippi Mills" respectfully represents: The said company or corporation, plaintiff, has obtained from the clerk of this honorable court a writ of attachment
161 ordering the sheriff of this parish to seize and to take into his possession the property, real and personal, rights, and credits of W. P. Ware, and to cause to be made in the manner prescribed by law an amount sufficient to pay and satisfy the same writ of attachment, viz., four hundred and twenty $\frac{54}{100}$ dollars, with six per cent. interest from 28 April, 1880; and having good reason to believe that the commercial firm of Allen, West & Bush, third persons, residing in this city, are indebted unto said defendant, or have property or effects in their possession or under their control belonging to said defendant—

Therefore petitioner prays that said Allen, West & Bush, as a commercial firm, be made garnishee herein and ordered to answer under oath the accompanying interrogatories, and, after all due and legal proceedings, condem-ed to pay the amount of said writ of attachment and costs.

J. M. HARDING,
Attorney for Petitioner.

162 *Interrogatories to be Answered Categorically under Oath, in Writing, Ten Days from Service.*

1st. Had you in your hands or under your control, directly or indirectly, at the time of service of these interrogatories or at any time since, any money, rights, credits, or other property whatsoever belonging or due to the said defendant in attachment or in which he has or had any interest for the whole or for a part; and, if yea, what

is the nature, description, and amount thereof, and is the same sufficient to pay or to satisfy the full amount of said writ of attachment; or, if less, to what amount, you being asked and required to make a full disclosure in relation to the same?

2d interrogatory. Were you not at the time of service upon you of these interrogatories or since, directly or indirectly, indebted or obligated unto the said defendant in attachment for anything
163 or for any sum whatever, whether for yourself alone or together with others, in consequence of any sale or exchange or transaction of any kind whatever, whether the same be due or to become due, and whether the interest of said defendant in attachment be direct or indirect or be for the whole or a part only, or whether it be by bill, note, or otherwise; and, if yea, what is the nature, description, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said writ of attachment, interest and costs; or, if less, what amount, you being asked and required to make a full and detailed disclosure in relation to the same?

3 interrogotory. Have you at any time since the service of notice of seizure in your hands herein made, directly or indirectly, unto or with the said defendant in attachment any payment or novation, or compromise or arrangement, or given him any note, or
164 written obligation, or received from him, directly or indirectly, any receipt or acquittance? And, if yea, state the nature, description, and amount thereof and the time, place, and circumstances of the same.

4 interrogatory. Has not W. P. Ware deposited money in your hands for his own account & benefit, and is not said money still in your hands, and does not the same amount to five hundred dollars? If not, state the exact amount.

J. M. HARDING, *Att'y.*

Let this supplemental petition be filed and let Mess. Allen, West & Bush, a commercial firm of this city, be made garnishees herein and ordered to answer the accompanying interrogatories, under oath, in writing, within ten days from service and as the law directs, as herein prayed for.

165 New Orleans, Dec. 19th, 1881.

A. L. TISSOT, *Judge.*

Endorsed: Exhibit D to J. H. Allen's deposition. (Seal.) Geo. A. Hero, commissioner.

Civil Dist. C't, Parish of Orleans.

THE MISSISSIPPI MILLS
vs.
W. P. WARE, Defendant; ALLEN, WEST & BUSH, Garnishees. } No. 4813.

And now comes James H. Allen, a member of the firm of Allen, —, garnishees in the above-entitled cause, and, for answer for his said firm to the 1st interrogatory, says: No.

To second interrogatory says: No.
To third interrogatory says: No.
To fourth interrogatory says: No.

And, having fully answered for his said firm, prays that his
166 said firm be hence dismissed, and that plaintiffs be taxed five dollars to pay garnishees, costs and attorneys' fees for drawing answer.

ALLEN, WEST & BUSH,
By J. H. ALLEN.

Sworn & subscribed to before me this 22 day of December, 1881.
THEO. GUYOLE, *Com'is'r.*

Endorsed: Exhibit "E" to J. H. Allen's deposition. (Seal.) Geo. A. Hero, commissioner.

T. P. Ware, proprietor of the great New York house, wholesale whisky dealer and dealer in dry goods, groceries, stoves, furniture, & also general merchandise.

HAZLEHURST, MISS., *Dec.* 20, 1881.

Messrs. Allen, West & Bush, New Orleans.

167 DEAR SIRS: Yours of late date to hand & noted. I gave Mr. Hayes instructions as to whom the money in your hands, left by me, belonged to & where to place it. I think that $611.00 of the money was drafts you collected for G. L. Ware; the other was transferred to my father, as I had borrowed the money from — to buy cotton with, in his name, which I did not do, as you told me that there was no danger of any attachment *of* soon. I told your Mr. Hayes who the different amounts belonged to & to transfer it to the proper account; so you will please answer that you are not in possession of any of my effects & oblige

Yours truly, W. P. WARE.

P. S.—I saw Mr. Hayes, who you transferred the accounts, so your books will show that nothing is due me.

168 Endorsed: Exhibit F to J. H. Allen's depositions. (Seal.) Geo. A. Hero, commissioner.

NEW ORLEANS, *Nov.* 7, '81.

To John M. Allen, Tupelo, Miss.:

Come to New Orleans immediately without fail. I want to see you on important business. Answer.

(Signed) JAMES H. ALLEN.

Copy of Telegram.

NEW ORLEANS, *Nov.* 7, '81.

To John M. Allen, Tupelo, Miss.:

Come to-day, if possible.

(Signed) JAMES H. ALLEN.

Paid.

Endorsed: Exhibit G to J. M. Allen's deposition. Geo. A. Hero, commissioner.

169 NEW ORLEANS, *July 4th*, 1881.

For and in consideration of the fact that Allen, West & Bush, of New Orleans, La., have advanced me large sums of money to facilitate me in my business, and whereas I am now indebted to them for the amount of the said advances, I hereby solemnly bind, agree, & obligate myself to protect Allen, West & Bush in every way possible, and in order to do this more completely I hereby agree by the 1st September to have made out a complete list of all my accounts, notes, stocks of goods, tan-yard, &-, etc., in due & legal shape and to deposit the said document in the hands of Judge H. B. Mays, and should it become necessary at any time to use the said security for the protection of Allen, West & Bush I do hereby agree & bind myself that Allen, West & Bush have then the full right to authorize the said Judge H. B. Mays to consum-ate
170 this absolute sale without any reservations whatever. I do also solemnly agree & promise not to make away with or dispose of any notes, acc'ts, &c., to the detriment or injury of Allen, West & Bush. Should it not become necessary to use these securities I solemnly promise & agree to go to work early in the fall to reduce the amount I am owing Allen, West & Bush as rapidly as possible, and to that end I shall use my very best efforts in the collection of debts, the sale of goods, &c., appropriating the proceeds to reducing the debts, & also promise to leave a good margin on every bale of cotton I ship Allen, West & Bush to reduce the debt by that means; and I furthermore promise that as soon as cotton commences to move in the fall I will bend my every energy to ship cotton as early as possible & in such quantities that the entire amount of my indebtedness to Allen, West & Bush may & shall be paid in full by or before Dec. 15, '81.

(Signed) T. P. WARE.

171 Witness:

JAMES C. REYNOLDS.

Endorsed: Exhibit H to deposition of J. H. Allen. Geo. A. Hero, commissioner.

Memoranda of Cotton Sold by Allen, West & Bush for Ac. T. P. Ware from Nov. 7, '81, to Nov. 12, '81.

Nov. 7.		5 b's	5 = b's	@ $10\frac{5}{8}$c.	total	5
" 8.		6 "		@ $11\frac{1}{8}$ct.		
		20 "		" 11 ct.		
		3 "		" $10\frac{3}{4}$	"	29
" 9.		21 b. c.		" $10\frac{3}{4}$		
		3 "		" $10\frac{1}{2}$	"	24
" 10.		5 "		" 12 c.		
		9 "		" $11\frac{3}{4}$		
		8 "		" $11\frac{1}{2}$		
		17 "		" $11\frac{1}{4}$		
		1 "		" $10\frac{1}{2}$		
		2 "		" $10\frac{3}{8}$		
		4 "		" $10\frac{3}{4}$		
"		2 "		" $9\frac{1}{2}$	"	48
	Nov. 11.	6 "		" 11		
172	"	1 "		" $10\frac{3}{4}$	"	7
		113 b's		Grand total		113 b's

Endorsed: Exhibit I to J. H. Allen's deposition. Geo. A. Hero, commissioner.

Copy.

NEW ORLEANS, *Dec.* 7, '81.

It is hereby agreed between Allen, West & Bush, upon the one hand, and W. P. Ware, upon the other, that Allen, West & Bush having purchased the stock of goods, wares, merchandise recently owned by T. P. Ware, in the store-house recently occupied by said T. P. Ware, in the town of Hazlehurst, in Copiah county, Mississippi, for the sum of fifteen thousand dollars, and are desirious of selling the same and realizing their money out of the same, it is hereby agreed by them that in consideration of W. P. Ware's
173 giving his time and attention to said business and assisting in selling the goods, that they, said Allen, West & Bush, will pay said Ware the sum of one hundred and twenty-five dollars per month so long as said Allen, West & Bush may desire his services in said business, to be carried on by them in the name of J. B. Allen; and it is further agreed that if said Ware, as chief salesman and cotton-buyer for same house, shall remain with the same until the full amount of the account of T. P. Ware with Allen, West & Bush, including a debt due Hill, Fletcher & Co., and the costs that have accrued in the U. S. courts in the attachment cases of Allen, West & Bush and Hill, Fletcher & Co. against said T. P. Ware are paid out of said stock so purchased, losses, expenses for selling and replenishing the same, the said W. P. Ware, by a surrender of his said salary of $125 per month, is to have what may remain
174 of said stock, and said W. P. Ware is to have the refusal of said stock of goods at any time he may pay said account of

T. P Ware with Allen, West & Bush, Hill, Fletcher & Co., and the costs aforesaid; but it is distinctly understood that until such payment is made, either by said W. P. Ware or out of said goods, they are to remain the property of Allen, West & Bush, and be control-ed by said J. B. Allen.

(Signed) ALLEN, WEST & BUSH.
W. L. WARE.

Witness:
J. M. ALLEN.
JAMES C. REYNOLDS.

Endorsed: Exhibit K to deposition of J. H. Allen. (Seal.) Geo. A. Hero, commissioner.

Copy.

NEW ORLEANS, *Nov.* 14, '81.

Messrs. Harris & Harris, Jackson, Miss.

175 D'R SIRS: If all of T. P. Ware's creditors would agree to accept 25c. on the dollar in settlement in full of their accounts we would be willing to furnish the money to do so.

It would not do for us to make the proposition, but as you are Mr. Ware's lawyers we write you our willingness as to what we would do, so that you might make the proposition to the creditors if you deem proper.

Yours truly,
(Signed) ALLEN, WEST & BUSH.

Endorsed: Exhibit L to deposition of J. H. Allen. (Seal.) Geo. A. Hero, commissioner.

Copy.

NEW ORLEANS, LA., *Jan'y* 23, '82.

Messrs. Skinner & Co., Baltimore, Md.

176 DEAR SIR-: Yours 16th to hand and noted. We may be able to use your claim at 33⅓c. on the dollar, although we are not sure about it.

Please let us know if you would be willing to accept our offer of that extent in case we are able to use the claim.

Yours truly,
(Signed) ALLEN, WEST & BUSH.

Endorsed: Exhibit N to deposition of J. H. Allen. (Seal.) Geo. A. Hero, commissioner.

Copy.

NEW ORLEANS, *Nov. 7th*, 1881.

Judge H. B. Mays, Hazlehurst, Miss.

D'R SIR: Mr. Ware has been down to-day to see us and has talked over his matters with us, and says he will at once confer fully with

you. This is a very important matter, and our Mr. Allen tel-
177 egraphed to-day for his brother, John M. Allen, to come here at once & he expects him here to-morrow, so that he can go up to-morrow night to consult with you as to what had best be done in the matter. For fear, however, that Mr. J. M. Allen may not reach here in time to go up to-morrow night we have engaged Mr. Alfred Goldthwaite, a lawyer of this city, to go to Hazlehurst on the morning train to consult with you and to be ready should any action become necessary prior to Mr. John M. Allen's arrival. Whatever is done we want it to be strictly correct, legal, & binding in every particular, so that it cannot be upset by any possibility at law or in any contingency. We also wire you to-night as an additional precaution: "If immediate action becomes necessary in the matter for which you have the papers you are authorized to act for us." This
178 letter will be handed to you by Mr. Goldthwaite in person, to whom the letter introduces you.

Yours truly,

(Signed) ALLEN, WEST & BUSH.

P. S.—If bonds have to be given we presume they will be large, & Mr. Ware said he would assist our lawyer in arranging them. Mr. Ware and ourselves understand each other entirely in this matter; Mr. Goldthwaite will take statements with him.

(Signed) A., W. & B.

Endorsed: Exhibit O to deposition of J. H. Allen. (Seal.) Geo. A. Hero, commissioner.

Copy of Telegram.

NEW ORLEANS, *Nov.* 7, '81.

To Judge H. B. Mayes, Hazlehurst, Miss.:

If immediate action becomes necessary in the matter for
179 which you have the papers you are authorized to act for us.

(Signed) ALLEN, WEST & BUSH.

(Prepaid.)

Endorsed: Exhibit P to deposition of J. H. Allen. (Seal.) Geo. A. Hero, commissioner.

Endorsed: Filed Apr. 22, 1884. Jas. M. McKee, cl'k.

And afterwards, to wit, on the 28th day of April, A. D. 1885, the deposition of Alfred H. Goldthwaite, a witness for the defendants in said cause, was filed in the office of the clerk of said court, and is in the words and figures following, to wit:

180 STATE OF LOUISIANA, *City of New Orleans:*

In accordance with the annexed agreement of counsel in the matter pending and undetermined in the chancery court of Copiah county, Mississippi, between W. P. Ware, as plaintiff, and Allen,

West & Bush, as defendants, to take the testimony of Alfred Goldthwaite, of New Orleans, Louisiana, as a witness on behalf of defendants, upon the annexed interrogatories and cross-interrogatories to him propounded, I, George A. Hero, a commissioner of the State of Mississippi in and for the State of Louisiana, at New Orleans, duly commissioned and qualified and authorized to administer oaths and to take and certify depositions, did, on the twenty-fifth day of April, A. D. 1884, call and cause to be and appear at my office, in the said city of New Orleans, the aforesaid Alfred Goldthwaite, and, having first duly & solemnly sworn him according to law to
181 testify to the truth, the whole truth, and nothing but the truth, & to make true answers to the annexed interrogatories and cross-interrogatories, *to* said Goldthwaite did thereupon depose & say as follows:

To the first interrogatory said Goldthwaite answered: I am acquainted with the parties of this suit.

To the second interrogatory said Goldthwaite answered: I live in New Orleans, Louisiana, & am a lawyer.

To the third interrogatory said Goldthwaite answered: Early in November, 1881, J. H. Allen, a member of the firm of Allen, West & Bush, of New Orleans, employed me to go to Hazlehurst, Mississippi, to look after the claim of his firm against T. P. Ware. John M. Allen was the attorney for Allen, West & Bush in Mississippi, and it was understood that I was not to take any steps in court until J. M. Allen could reach Hazlehurst, unless there a ne-
182 cessity to act promptly, in which case I was to use my discretion. Other creditors were pressing their claims, and it was feared that attachments would be sued out and delays would be dangerous.

To the fourth interrogatory said Goldthwaite answered: I had been in Hazlehurst two or three days waiting for J. M. Allen to come. He finally arrived on the train leaving New Orleans at five o'clock in the afternoon and due at Hazlehurst about 12 o'clock midnight. I met him at the depot and walked with him by the store of T. P. Ware, where W. P. Ware joined us, and we then went to the residence of W. P. Ware. Ware took me into his parlor and we talked about the business. Allen & Ware did most of the talking. As I felt that my duties were ended when Allen arrived, I had very little to say except when asked for my opinion.

To the fifth interrogatory said Goldthwaite answered: The
183 conversation took place in the parlor of W. P. Ware's residence. W. P. Ware, J. M. Allen, & I were the only persons present. We first told Allen what the situation was & of the presence of a number of persons in Hazlehurst representing the creditors of T. P. Ware. I told Allen what I knew, & that something would have to be done, as the creditors were getting very impatient and each one was waiting for some other creditor to move first. They were all afraid to attach, because they did not know of any overt act to justify an attachment. W. P. Ware had one or more notes made by T. P. Ware, his brother, for about ten thousand dollars, which he was very anxious

to secure the payment of. The business had been conducted in the name of T. P. Ware, who owed W. P. Ware this amount. W. P. Ware wanted Allen, West & Bush to join or, rather, assume the debt of T. P. Ware, and whatever they did to treat the $10,000 due W. P. Ware as a part of a debt due by T. P. Ware to Allen, West & Bush. Allen,
184 West & Bush's debt or claim was about eighteen thousand dollars. W. P. Ware wanted them to make out their claim as if T. P. Ware owed them twenty-eight thousand, $28,000, dollars—if they attached, to attach for $28,000; if they took a bill of sale, to make the consideration $28,000. He had gotten some kind of a paper from Allen, West & Bush when in New Orleans that gave him some hope that they would help him. I never saw the paper, though I may have seen a copy of it. In the conversation at W. P. Ware's house all this was talked over, and Ware urged John Allen to do this. Allen did not think it could be done, and asked me what I thought of it. I advised against it, as I thought that a bill in equity would set aside any assignment or sale made with such a purpose, and the attachment would be set aside when the true facts were developed, as they certainly would be on a trial. Ware finally said he had
185 seen Judge Wylie P. Harris, at Jackson, and he had said it could be done. Allen remarked that he had great respect for Judge Harris' opinion, & he would go to Jackson and consult with Judge Harris. The matter was discussed for some time, but Allen was firm in his opinion that any attempt to save W. P. Ware by amalgamating his claim with Allen, West & Bush's would jeopardize the whole of Allen, West & Bush's claim. Allen finally said that he would go up on the freight train, which passed Hazlehurst about 2 or 3 o'clock in the morning, to Jackson & see Judge Harris, and would defer to his opinion. I went with him to the train.

To the sixth interrogatory said Goldthwaite answered: Before J. M. Allen came I had been in Hazlehurst two or three days. I had repeated conversations with W. P. Ware, who was in charge of the business. He knew that I was then only to act in case of a crisis. I did not want to do anything to disturb the *statu quo* until Jno. M. Allen should arrive. My recollection is that I went with
186 Ware to see Judge Mays, who had been named as the party to act for Allen, West & Bush in case the affairs of T. P. Ware got very bad. Judge Mays said it was disagreeable business to him, & that he could not act; whatever was done he did not want to be connected with it in any way. Ware always insisted that his plan to sell or assign, including the T. P. Ware notes to him, could be carried out; that Allen, West & Bush should pay him the $10,000 and endeavor to make $28,000 out of the stock. When I use figures I cannot pretend to be accurate, as I cannot recollect now the debt to either W. P. Ware or to Allen, West & Bush. I was not clothed with any power to act and would not take any responsibility. He would not give up the paper Allen, West & Bush had given him in New Orleans without I took the responsibility of doing what he wanted me to do. This I would not do, but told him to wait until John Allen arrived. I understood from W. P. Ware that
187 what had been done in New Orleans was incomplete and was

to show a disposition to aid W. P. Ware in the settlement if it could be legally done.

To the seventh interrogatory said Goldthwaite answered: The matter inquired about in the seventh interrogatory took place between Allen, West & Bush and W. P. Ware, in New Orleans, before James H. Allen consulted with and employed me. James H. Allen, if I remember correctly, showed me the copy of the paper he had given W. P. Ware, & I advised him to get it from W. P. Ware if he could. It was unnecessary and might give him trouble. When I went to Hazlehurst I was instructed to get the original, if possible, from W. P. Ware. This I was not able to do.

To the eighth interrogatory said Goldthwaite answered: I remained in Hazlehurst then a few days. I was absent from the office, I think, a part of five days. Jno. M. Allen reached Hazle-
188 hurst at 11 or 12 o'clock at night. I think I took the down train at about daylight. I did not see John Allen afterwards. W. P. Ware was the sole man in charge of the business. I do not recollect ever having seen T. P. Ware. He was at Crystal Springs, I understood, and I had no conversation with him. W. P. Ware had charge of the Hazlehurst store & was conducting the business in the name of T. P. Ware.

To the first cross-interrogatory said Goldthwaite answered: My recollection is that I took with me a general letter authorizing me to attend to that piece of business for Allen, West & Bush. I may have carried letters to each separately, but think not. W. P. Ware took me to Judge Mays' house one afternoon & introduced me to Judge Mays, with whom I had quite a lengthy interview. I had never seen Judge Mays before. I may have been introduced to W. P. Ware before in New Orleans; I don't remember positively;
189 certainly I did not know him except in connection with this business.

To the second cross-interrogatory said Goldthwaite answered: Judge Mays was greatly respected by James H. Allen, & had been named in a paper executed by T. P. Ware, I think, to look after the business in a general way, & if anything happened or was likely to happen to imperil the interest of Allen, West & Bush then he, Judge Mays, was to take possession, under the power conferred upon him by the paper, & secure Allen, West & Bush. It may have been a mortgage or trust deed or a nondescript; I don't think it was drawn up by any lawyer according to any form. My business was to see Judge Mays & to get him to act or to confer with him. He was reluctant to be mixed up with the business, as Ware was connected with him by marriage & it promised to be disagreeable. I saw his embarrassment and did not urge him. My business with
190 Ware was to see that no creditor got any advantage over Allen, West & Bush until John Allen could reach Hazlehurst. If no creditor moved I was to do nothing. The reason for this was that I did not expect to look after this suit, & it was thought best, if any suit was commenced, it should be instituted by the lawyer who would have to manage it, &, again, John Allen was a Mississippi lawyer & much more familiar with Mississippi law.

To the third cross-interrogatory said Goldthwaite answered: To answer to the cross-interrogatory I would say I knew nothing of the business except what I saw while in Hazlehurst & what was told me by W. P. Ware. I did not have any intercourse with T. P. Ware & did not see him.

To the fourth cross-interrogatory said Goldthwaite an-
191 swered: After so long a time I cannot say what the character of the paper was nor its contents, nor can I answer more specifically about carrying a letter of introduction to Judge Mays than I have already answered.

To the fifth cross-interrogatory said Goldthwaite answered: My recollection is that I did.

To the sixth cross-interrogatory said Goldthwaite answered: I cannot say if I presented a letter of introduction to W. P. Ware. My general impression is that I showed to W. P. Ware a general letter from Allen, West & Bush authorizing me to attend to that business & to represent them. W. P. Ware took me to Judge Mays' residence & introduced me to him.

To the seventh cross-interrogatory said Goldthwaite answered: It is difficult for me to recall a conversation had nearly three years ago with Judge Mays. Judge Mays was reluctant to have any-
192 thing to do with the business & preferred not to advise about it. It was full of peril to him, & when I found he took that view of it I did not want to embarrass him. I talked to him generally, but the conversation all came back to the one thing—that it was unpleasant to him to have anything to do with it. I was not then to act, but to watch. The difficulty, I think, was that *if* the paper was taken for a chattel mortgage, as the stock in the store was continually changing & it could not be proved that the stock was the same when a foreclosure would be attempted as when the mortgage was made.

To the eighth cross-interrogatory said Goldthwaite answered: Being a Louisiana lawyer I did not know much about the value of the paper purporting to be a chattel mortgage or sale. I had to rely on Judge Mays. I never made any such proposition as is inquired about. If anything was said it was never more than a sug-
193 gestion as to what might be done. I did not offer to do anything, and there was no consent to any proposition by W. P. Ware. He knew as well as I did that I was there waiting for John M. Allen & could not act except in an *i*mergency, so that I had no power to make any proposition.

To the ninth cross-interrogatory said Goldthwaite answered: I have been careful to give my answers to the direct interrogatories & they must stand as they were given.

To the tenth cross-interrogatory said Goldthwaite answered: I did not understand that Judge Mays was attorney for either party. He was spoken of by Jas. H. Allen as a man of intelligence & of high character who would give me assistance, and Allen said I might rely on what he said. I did not understand that he would be a lawyer in the case because of his connection with W. P. Ware.

194 To the eleventh cross-interrogatory said Goldthwaite answered: My recollection is that I was in Hazlehurst 3 or 4 days. J. M. Allen reached there at 11 or 12 o'clock one night. I left next morning — daylight.

To the twelfth cross-interrogatory said Goldthwaite answered: I have heretofore answered this interrogatory.

To the thirteenth cross-interrogatory said Goldthwaite answered: I met John M. Allen at the train & walked with him by the store, when we were joined by W. P. Ware. We then went to W. P. Ware's house, where we remained talking for more than an hour. It was about midnight, & no one but we three were present.

To the fourteenth cross-interrogatory said Goldthwaite answered:

195 We made no effort to keep the conference quiet other than to attend to our business & not to talk about it. It was the only time we had to talk to John Allen, as if he had not gone to Jackson that night in the freight train he would not have been able to go until the passenger train came up the following night. There was no prearrangement about this, as Jno. Allen did not know he would have to go to Jackson until Ware mentioned Judge Wylie P. Harris' opinion.

To the fifteenth cross-interrogatory said Goldthwaite answered: I never heard any arrangement about the key. I was not a party to any such trick as is inquired about, & never heard it before. W. P. Ware was friendly to Allen, West & Bush, or appeared to be. If anybody attached he wanted them protected for their kindness, but there was no collusion or fraud. W. P. Ware thought he could save himself through them, & that was the reason he was so friendly, I thought.

196 To the sixteenth cross-interrogatory said Goldthwaite answered: I never heard from T. P. Ware, and never saw him that I know of. Certainly I had no conversation with him. I do not know him.

To the seventeenth cross-interrogatory said Goldthwaite answered: I never thought Ware was anxious to save Allen, West & Bush, except in some way to be benefitted himself. He was willing to do anything if he could come in and secure the money T. P. Ware owed him. He did not want to appear on the surface as a creditor for some reason, & his whole purpose was to let it appear as a claim belonging to Allen, West & Bush.

To the eighteenth cross-interrogatory said Goldthwaite answered: I left Hazlehurst before any attachment was sued out, & don't know of any such arrangement as is inquired about being made. No such

197 arrangement was made with me, & I have never heard of any such arrangement being made with any one else. When I left Hazlehurst John Allen had gone to Jackson to consult with Judge Wylie P. Harris, & it was not known whether there would be an attachment, assignment, or sale. I had no connection with the business after I left Hazlehurst.

To the nineteenth cross-interrogatory said Goldthwaite answered: My conversations with Ware were numerous. I never had but one interview with Judge Mays; it was in the afternoon, at his resi-

dence. W. P. Ware, Judge Mays, & I were the only ones present, and I think W. P. Ware did not remain during the whole interview.

ALFRED GOLDTHWAITE.

198 I, George A. Hero, a duly appointed commissioner of the State of Mississippi, at New Orleans, do certify that the above & foregoing deposition of Alfred Goldthwaite was taken down under oath as aforesaid & reduced to writing by me in his presence; that the same was by me read over to and approved by him, and that thereupon the above depositions were sworn to — subscribed by said witness, Alfred Goldthwaite, before me, at New Orleans, this April 25th, 1884.

As witness my hand & seal.

[Seal George A. Hero, Commissioner, New Orleans.]

GEO. A. HERO,
Commissioner.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

JANUARY 7TH, 1884.

It is agreed to waive notice and commission, and that the following questions be mailed to George A. Hero, commissioner, New Orleans, Louisiana, and that said Hero then take and certify
199 his deposition in form, and that said Hero forward the deposition under seal to James M. McKee, Esq., clerk of the circuit court of the United States for the southern district of Mississippi, Jackson, Miss., and that the same be evidence in said cause, subject only to any valid objections or exception as to relevancy and pertinency and for not being taken in time or applied for in time.

CALHOON & GREEN, *P. Q.*

THE STATE OF MISSISSIPPI, *Copiah County:*

Chancery Court.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

Interrogatories to be propounded to Alfred Goldthwaite, the answers to which, when taken, to be read as testimony for the defendant in the above-stated case.

Int. 1. Are you acquainted with the parties to this suit?

200 Int. 2. Where do you reside, and what is your profession?

Int. 3. State whether or not you had any connection professionally with a claim of Allen, West & Bush against T. P. Ware about the 7th day of November, 1881; and, if so, state what your connection with said claim was.

Int. 4. State whether or not you were present at an interview between W. P. Ware, the complainant in the above-styled case, and your-

self and John M. Allen, as the attorneys of Allen, West & Bush, in reference to the claim of Allen, West & Bush *vs.* T. P. Ware and the claims of W. P. Ware *vs.* T. P. Ware.

Int. 5. If, in answer to the last interrogatory, you answer that you were present at such an interview state when and where it took place, who were present, and what was said as well as you can remember.

201 Int. 6. If you had any conversation with W. P. Ware in reference to some notes he had transferred to Allen, West & Bush on T. P. Ware other than what occurred in the presence of John M. Allen just state what it was.

Int. 7. If you know anything else about this matter of the transfer of some notes on T. P. Ware by W. P. Ware and an obligation given by Allen, West & Bush to W. P. Ware that would be of any interest to either of the parties to this suit state fully all you know about it.

Int. 8th. If you went to Hazlehurst to look after the claim of Allen, West & Bush *vs.* T. P Ware state how long you remained there and who seemed to be in charge of the business that was being conducted in the name of T. P. Ware and whether or not you saw T. P. Ware and who you conferred with about the claim of A.,

202 W. & B. against T. P. Ware.

JOHN M. ALLEN,
Att'y for Def'ts.

The complainant, W. P. Ware, objects and excepts to the 4th, 5th, 6th, 7th, & 8th interrogatories-in-chief as manifestly incompetent, illegal, impertenent, and immaterial to the issue, and propounds the following cross-interrogatories:

X Int. 1. When you came to Hazlehurst on the visit you refer to did you not bring with you letters of introduction to W. P. Ware and to Judge H. B. Mays; and had you ever seen either of them previously, and were you previously acquainted with either?

X Int. 2. What was your business with Judge Mays, and what with W. P. Ware? And state fully and in detail and accurately what you were sent to Hazlehurst by Allen, West & Bush

203 to do, & what were you to say to Mayes & Ware.

X Int. 3. If you have undertaken to answer the 8th interrogatory-in-chief as to who "seemed to be in charge of the business" of T. P. Ware, state facts which caused such seeming, and then state if you or your principals ever had any doubt that W. P. Ware was the chief manager of the business of T. P. Ware's store.

X Int. 4. On the visit to Hazlehurst you refer to did you not hand Judge Mays a letter to him from Allen, West & Bush requesting him, if he thought it safe, to claim for them the Hazlehurst stock of goods under a bill of sale from T. P. Ware to Allen, West & Bush of that stock drawn by Judge Mays, executed in the preceding spring, 1881, and held by Judge Mays? Did you not see such a bill of sale? Did you not confer with Judge Mays as to the expediency of claiming under such a bill of sale?

X Int. 5. On that visit did you not state to Judge Mays that you were sent to Hazlehurst to act for the protection of Allen, West & Bush in case other creditors showed a disposition to attach?

X Int. 6. On that visit to Hazlehurst did you not first seek W. P. Ware and present to him a letter of introduction, and did you and he not go together to Judge Mays'?

X Int. 7. On finding Judge Mays did you not say to him that you thought Allen, West & Bush could claim under the aforesaid spring bill of sale, and that Allen, West & Bush had left it to him, Judge Mays, to determine whether they should do so or not, and did not Judge Mays say he did not think that course prudent or safe? State all you did say.

X Int. 8. In that interview with Judge Mays, W. P. Ware
205 being present, did you not say that if you could claim under the spring bill of sale and if Ware consented you would redeliver him the two $5,000 T. P. Ware notes and let him attach the Crystal Springs stock, and if W. P. Ware did not consent you would carry out the original $10,000 contract, and did not Ware consent, and was not all this exploded by Judge Mays' adverse opinion to the feasibility of claiming under the spring bill of sale? Tell what you did say.

X Int. 9. Review each of your answers to the interrogatories-in-chief and say what part of them, if any, is not of your own personal knowledge.

X Int. 10. Did you understand that Judge Mays was the attorney of Allen, West & Bush or of the Wares when you went to Hazlehurst?

206 X Int. 11. How long did you remain in Hazlehurst on that visit? Did not John M. Allen arrive while you were there?

X Int. 12. How long did you remain in Hazlehurst after John M. Allen arrived and how long had you been there before he came?

X Int. 13. After John M. Allen arrived did you and he have any conferences with the Wares, or either of them, and were such conferences in the day or night time?

X Int. 14. Was it not the effort to keep such conferences private and to prevent the fact of them from transpiring?

X Int. 15. What was the arrangement about the key to Ware's storehouse in case of attachment? Was it not understood that the Wares were to promote the wishes of Allen, West & Bush, to make them prior attachees? Was not T. P. Ware to remain con-
207 cealed if a sheriff came to attach; but when the marshal came with Allen, West & Bush's attachment he should come out on a signal from under the town bridge and give the key to the store to the marshal? and was it not agreed, in order to deceive other creditors, that John Allen and the Wares should appear to be on bad terms?

X Int. 16. Did you ever hear from T. P. Ware any denial of the fact of his liability on his two $5,000 notes to W. P. Ware?

X Int. 17. Explain how it happened that the Wares were so anxious that Allen, West & Bush should have all the Hazlehurst assets of T. P. Ware to the exclusion of all other of his creditors.

X Int. 18. Was it not agreed that T. P. Ware should not make any defense to the attachment of Allen, West & Bush, and that, after they attached, he should consent to a sale of the stock in
208 bulk? and was not this expressly to enable Allen, West & Bush to buy cheaply the stock and in order ultimately to benefit the Wares, or one of them, and with the understanding they, Allen, West & Bush, should pay their $10,000 note to W. P. Ware?

X Int. 19. Amend your answer to interrogatory-in-chief numbered 6 by stating when such conversation was, where it was, who was present, and how it came up.

Endorsed: Filed April 28, 1884. Jas. M. McKee, cl'k.

And on said 28th day of April, A. D. 1884, the plaintiffs in said cause filed in the office of the clerk of said court a transcript from the record of a certain cause in the circuit court of Copiah county as evidence; which is in the words and figures following, to wit:

209 In Circuit Court, Copiah County, to April Term, 1882.

H. T. COTTAM & Co. *vs.* T. P. WARE. } No. 574½

Interrogatories to be propounded to James H. Allen, a witness for plaintiff in the above-stated cause, who lives in the city of New Orleans, Louisiana.

Int. 1st. State the place of your residence now and during the year 1881 & in what business you were engaged during the year 1881, &, if a member of any firm or partnership, give the name and style of such firm or partnership & in what business said firm was engaged during the year 1881.

Int. 2nd. State when the firm of Allen, West & Bush began to do business with the defendant, T. P. Ware.

Int. 3rd. With which member of the Ware family of Hazlehurst did most of your correspondence, conversations, agreements,
210 and contracts in and about the business matters between Allen, West & Bush & T. P. Ware occur—that is, who was the general manager of the business of T. P. Ware & his agent with whom the business in his name was conducted with Allen, West & Bush?

Int. 4. During the year 1881 state whether or not Allen, West & Bush had any business transactions with W. P. Ware on his own account or in his own name; and, if so, state the nature and extent of that business.

Int. 5. State whether or not the business of T. P. Ware with Allen, West & Bush was conducted principally through an agent & general manager of T. P. Ware & his business or directed by T. P. Ware him-

self; &, if you say said business was conducted principally by an agent of T. P. Ware, state his name.

Int. 6. State whether or not you saw in the city of New Orleans *with* T. P. Ware or W. P. Ware a few days before the day on which your attachment against the estate of T. P. Ware, now
211 depending in the district court of the United States for the southern district of Mississippi, was sued out; and, if so, state how many days before said attachment was sued out by Allen, West & Bush, & which one of them you saw.

Int. 7. Allen, West & Bush attached T. P. Ware on the 12th day of November, 1881. How many days before that was it that you last saw T. P. & W. P. Ware, or either of them, & where was it that you saw them?

Int. 8th. State whether you had any conversation with the one you saw there; and, if so, give the subject of & the conversation in full, as nearly as you can.

Int. 9. State whether or not at any time before you attached L. P. Ware any proposition was made to you by either W. P. Ware or T. P. Ware to attach the estate of T. P. Ware for what was due Allen, West & Bush by T. P. Ware; &, if so, state who made the proposition.

212 Int. 10. State whether or not you were informed by any one a few days or a few weeks before you attached T. P. Ware that the said T. P. Ware was largely indebted, & that there was a likelyhood of his being attached; and, if so, who it was who so informed you & what was said.

Int. 11. State whether or not any proposition or suggestion was ever made to you shortly before you attached T. P. Ware that a draft should be drawn by T. P. Ware in favor of his father, W. J. Ware, or any other person for a certain sum of money, & that said draft should be accepted by Allen, West & Bush & by them charged against T. P. Ware, so as to make the debt of T. P. Ware to Allen, West & Bush greater than it then was, & that they should attach for the whole debt, including this draft, and if any such proposition or suggestion was made to you state all that was said about it & done about it.

213 Int. 12. State whether or not you procured the attorney of Allen, West & Bush to go with W. P. Ware to consult with W. P. Harris a few days before you attached T. P. Ware; and, if so, for what purpose & at whose solicitation was said consultation held.

Int. 13. State the exact amount due Allen, West & Bush by T. P. Ware on the 12th day of November, 1881, after deducting all the credits to which T. P. Ware was then entitled, & how much cotton you had then on hand of his unsold at that date, & whether or not you have yet sold all or any part of said cotton on hand at that date; and, if so, how much does T. P. Ware now owe Allen, West & Bush, deducting all the credits to which he is now entitled, and how much cotton of T. P. Ware yet remains to be sold in the hands of Allen, West & Bush, and deliver please to the commissioner an itemized account showing both the debits and the credits correctly, &

214 the cotton, if any on hand, of the entire business dealings between T. P. Ware & Allen, West & Bush from the beginning of those dealings up to this date, & have the same marked Exhibit No. 1 to your answer to this interrogatory.

Int. 14. Do you state under oath that the said Exhibit No. 1 to interrogatory 13 is a correct and true & honest & full exhibit of the account and business dealings between T. P. Ware & Allen, West & Bush, & that the debits therein charged are all just, true, & fair debits against T. P. Ware, by him honestly due Allen, West & Bush, & that the credits therein are all the credits to which he is entitled against Allen, West & Bush, & that the cotton stated as on hand therein is all of the cotton that Allen, West & Bush have on hand belonging to the said T. P. Ware, &, if not, then tell us which are correct & which incorrect.

Int. 15. How much business did Allen, West & Bush do
215 with W. P. Ware during the year 1881 and about the 6th of Dec., 1881, to whose account did you pass balance due him, W. P. Ware, on your books, who ordered it done, and how much was it; what became of the $700.00 deposited by W. P. Ware on the — day of Dec., 1881, about a week or so after Dec'r 6th, 1881, with Allen, West & Bush, and to whose credit was it passed on the books of Allen, West & Bush, and when was it done & by whose order?

Int. 16. Give us all the reasons stated to you by W. P. Ware why he had all amounts due him on or about the 6th day of December, 1881, passed to the credit of W. J. Ware, and state how W. J. Ware is related to W. P. Ware, and where he lives.

Int. 17. Who purchased the car-load of flour of Allen, West & Co., of St. Louis, which was shipped to W. J. Ware, amounting to $640.50, about the month of Dec'r, 1881, & Jan'y, 1882, & if you say Allen, West & Bush did, then tell us with whose money & out of what fund it was paid for?

216 Int. 18. Who has owned the stock of goods in the store occupied by T. P. Ware when you attached him, in Nov. last, since said attachment?

Int. 19. If you say Allen, West & Bush have owned said stock of goods state whether or not they have sold said goods recently & to whom & for what price & how was the money paid or secured to be paid.

Int. 20. Please state how much money Allen, West & Bush have received from sale of goods of said stock formerly belonging to T. P. Ware since Nov., 1881, and file with the commissioner a correct account of the amount received & expended by Allen, West & Bush from said stock of goods of T. P. Ware since Nov'r, 1881, as Exhibit No. 2 to your answer to this interrogatory.

Int. 21. Was the contract you or Allen, West & Bush made with either T. P., W. P., or G. L. Ware, or that was made with either of them, by J. B. Allen, your agent, subsequent to your attach-
217 ing them, wherein you agreed to pay W. P. Ware one hundred & twenty-five dollars per month for his service in said store,

in writing? If so, file with the commissioner a true copy thereof as Exhibit No. 3 to your answer to this interrogatory.

Int. 22. Have you or Allen, West & Bush or J. B. Allen, as your or their agent or in his own name, made any contract with either T. P., W. P., or G. L. Ware in reference to the goods in the store occupied by T. P. Ware when you attached him since your attachment was made; &, if so, was it in writing? &, if so, produce it before the commissioner & allow him to copy it & file it as Exhibit No. 4 here to this deposition.

Int. 23. You certainly employed T. P. Ware since you owned the Ware stock of goods in Hazlehurst or he was a clerk there as your employee, since Nov'r last. Now, tell us the agreement between you and him about that employment, and was it in writing; &, if
218 so, produce it before the commissioner & allow him to copy it & file it as Exhibit No. 5 to this deposition.

Int. 24. Can you solemnly and truthfully swear that there was no agreement or understanding either before or since you attached T. P. Ware with either T. P. or W. P. Ware that they or one of them or their father or brother were to be in any manner benefitted by the levy of your attachment against T. P. Ware? And if you cannot tell us, then — what such agreement or understanding was.

Int. 25. When Allen, West & Bush bought the car-load of flour which was shipped by Allen, West & Co. from St. Louis to W. J. Ware, at Hazlehurst, about the month of Dec., 1881, & Jan'y, 1882, you have already stated that this flour was paid for out of the $700.00 deposited with you by W. P. Ware. Now, is it not true that W. P. Ware told you his reason for having the amounts on your books to his credit transferred to his father's acc't — to
219 avoid attachments threatened by his or the creditors of T. P. Ware; &, if you say no, then I ask you if you did not so swear in the case of the Mississippi Mills *vs.* T. P. Ware, in which you were garnishees, in the court in your city, about the 20th day of Jan'y, 1882?

Int. 26. How much money have you in your or your firm's hands belonging to W. P., T. P., & G. L. Ware or either of them? And please exhibit your books of account before the commissioner & allow him to make true copies of said W. P. &. G. L. Ware's accounts on your books since last November & file the same as Exhibits Nos. 6 & 7 to this deposition.

Int. 27. Please state what business dealings you or your firm have had with W. J. Ware, the father of W. P., T. P., & G. L. Ware; &, if any, state the extent of that business & what it was & how it was & how it came you or y'r firm to have business dealings with W. J. Ware, & please exhibit your books of account before the com-
220 missioner & allow him to make a true copy of said W. J. Ware's account thereon & file the same as Exhibit No. 8 to this deposition.

Int. 28. Did you ever see W. J. Ware or have any communication with him directly? &, if not, state who conducted the business dealings between Allen, West & Bush & W. J. Ware, and if some

one else did, then state what reasons, if any, that person gave you for running an account with Allen, West & Bush in the name of W. J. Ware.

Int. 29. State whether or not, since you attached T. P. Ware, Allen, West & Bush have had any business dealings with him, T. P. Ware & whether or not Allen, West & Bush have bought any cotton futures for him; &, if so, & how much, and state what those business dealings were.

Int. 30. On or about the 16th of Dec'r, 1881, if you received any drafts for the sum of $611.00 or thereabouts or for any other
221 amounts then or at any other time since Dec. 1st, 1881, payable to G. L. Ware, now please state by whom said drafts were drawn & against whom & the amounts & dates thereof; and, if collected, state to whose credit it or they were placed.

Int. 31. Who ordered the drafts payable to G. L. Ware for $611.00, passed to the credit of W. J. Ware about the 16th Dec'r, 1881?

Int. 32. Who is the general manager of Allen, West & Bush in New Orleans, and how long has that person been general manager of that business?

Int. 33. State what amount of notes and accounts & other collaterals of T. P. Ware Allen, West & Bush held when you attached him or since, giving a true list thereof, with names of debtors, dates, and amounts in full.

R. N. MILLER,
Pl'ff's Att'y.

222 STATE OF MISSISSIPPI, *Copiah County:*

I, E. W. Brown, clerk of the circuit court in & for said county, do hereby certify that the above and foregoing 7 pages contain a true and perfect transcript of the interrogatories filed in the case of H. T. Cottam & Co. *vs.* T. P. Ware, now pending in said court, as the same appears of file in my office.

Given under my hand & official seal this April 12th, 1882.

[SEAL.] E. W. BROWN, *Clerk.*

The State of Mississippi to Alfred Ingraham, of the city of New Orleans, La., a commissioner for the State of Mississippi, Greeting:

Know you that, reposing especial trust and confidence in your skill and integrity, we do empower and request you to cause James H. Allen to come before you at such time and place as you shall appoint, and then and there the examination of said witness
223 upon the interrogatories hitherto annexed in the case of H. T. Cottam & Co. against T. P. Ware, pending in our circuit court for the county of Copiah, in said State, to take and distinctly and plainly write down, having first duly sworn said witness to speak the truth, the whole truth, and nothing but the truth in answer to said interrogatories, and such examination, when so taken, you will certify and send, together with this commission and the interrogatories annexed, to our said circuit court, at Hazlehurst, in said county, so that the same be there in or before the fourth Monday of April, 1882, to be read in evidence on the trial of said cause.

Witness the signature of the clerk and seal of said Copiah Co. cir. court hereto affixed, at office, at Hazlehurst, the 12th day of April, A. D. 1882.

[SEAL.] E. W. BROWN, *Clerk.*

224 In Circuit Court, Copiah County, to April Term, 1882.

H. T. COTTAM & Co. — T. P. WARE.

JAMES H. ALLEN, the witness named to be examined under the commission issued in the above-stated case, hereunto annexed, being produced and duly sworn, deposes and answers as follows, to wit:

Answer to int. 1st. I reside now in the city of New Orleans, State of Louisiana; resided here in 1881. I am engaged in the cotton factorage business. I am a member of the firm of Allen, West & Bush, cotton factors, New Orleans, La.

Answer to int. 2. Allen, West & Bush commenced to do business with T. P. Ware on or about April 25th, 1879.

Answer to int. 3. I had conversations with both T. P. Ware and W. P. Ware. I was in Hazlehurst only a few times when I
225 saw both T. P. Ware and W. P. Ware together, and consulted with them about the business of T. P. Ware. I saw W. P. Ware more frequently here, as he was in the city oftener than T. P. Ware, but most of our business and agreements were done through correspondence. I don't think that it was done in the handwriting of either T. P. Ware or W. P. Ware, but in the handwriting of the correspondant of T. P. Ware.

Answer to int. 4th. During the year 1881, on Nov. 14, we bought 200 bales future cotton for W. P. Ware, and he deposited $297.70 as margins on same on same date. On Dec'r 1st, 1881, he ordered 200 bales futures closed out, and his account showed a balance due him of $352.32. On Dec'r 2d, 1881, we paid him $200 cash, and our books show that under the date of Dec'r 6th, 1881, W. P. Ware ordered the balance of $152.32 then to his credit transferred to the credit of W. J. Ware, which we did. We afterwards bought 600 bales
226 future cotton on the 3d and 7th Dec., by direction of W. P. Ware, which he informed us were for the accouut of W. J. Ware; 400 bales were sold out Dec'r 6, 1881, and the profit—$163.50—was placed to the credit of W. J. Ware, and the other 200 bales were closed out Feb'y 13th, 1882, and the loss—$703.32—was charged to W. J. Ware.

Answer to int. 5. As I have stated in answer to interrogatory No. 3, it was done principally through correspondence, and, as I have stated, I do not think the letters were written by either T. P. Ware or his brother, W. P. Ware, but through the correspondent of T. P. Ware, whom you no doubt know.

Answer to int. 6. T. P. Ware and W. P. Ware were here a short time before the attachment. W. P. Ware was here last, which I think was five or six days before the attachment.

Answer to int. 7. I saw W. P. Ware here, I think it was, five or six days before the attachment. I saw him first in the cotton
227 exchange, afterwards on the street, then in my office.

Answer to int. 8. W. P. Ware stated to me in this conversation that T. P. Ware and one of his clerks, a Mr. Guisic, had gone West & North early in the fall and had foolishly bought a large stock of goods and had made the paper payable in a very short while, much of which paper had already fallen due and we had paid the same; some had just matured, which we were refusing to pay, and the rest was rapidly maturing; that the creditors of T. P. Ware were all very uneasy, and that unless T. P. Ware could get immediate relief and pay those parties he thought he would be attached. He thought if we were not willing to pay these debts of T. P. Ware that were part due and falling due that we were in danger of loosing our debt. He also said that when T. P. Ware had first gone into business he, W. P. Ware, had loaned T. P. Ware ten thousand
228 dollars. W. P. Ware also said if we would pay him the $10,000.00 that T. P. Ware owed him he would get T. P. Ware to sell out to us so we would save our own debt. He also asked us that in case we were not willing to buy out T. P. Ware, if he, W. P. Ware, would give us information by which we would have legal grounds of an attachment, would we then buy his claim against T. P. Ware. He assured us that up to that time there were no grounds under which an attachment could legally be levied. We told W. P. Ware that we were very anxious to save our debt, and if we could legally buy his claim against T. P. Ware and save our whole debt we were willing to do so, but that we could do nothing nor could we make him any promise whatever until we had seen our attorney and had his advice as to whether we could do so legally; that we
229 would dispatch for our attorney to come at once so that we could consult him in the matter.

Answer to int. 9. This is answered in my reply to interrogatory No. 8, as above.

Answer to int. 10. This is answered in my reply to interrogatory No. 8 herein.

Answer to int. 11. No such proposition was made to me.

Answer to int. 12. I did not procure the attorney of Allen, West & Bush for any such thing or purpose.

Answer to int. 13. On Nov. 12th, 1881, T. P. Ware owed Allen, West & Bush $31,773.61, not including interest, and had 328 b. c. on hand on that date, yet for the credit of account we accompany with this a statement of T. P. Ware's account, which includes every transaction with him, which is marked Exhibit No. 1.

Answer to int. 14. I do most solemnly swear that the state-
230 ment of account which I render as Exhibit No. 1 of the debits and credits of T. P. Ware is true & correct in every particular, and is for money sent, drafts paid, merchandise sent, & for the proceeds of cotton shipped us by T. P. Ware, and are all legitimate and straightforward business transactions, and our books and all our dealings with all the Wares are open to the inspection of your commissioner so that he can take statements of all the Wares' ac-

counts and all other accounts on our books if necessary to prove the correctness of our statements.

Answer to int. 15. I have stated all the business done with W. P. Ware in the year 1881 in my answer to interrogatory No. 4 herein. We passed the balance of W. P. Ware's to the credit of W. J. Ware, as stated in answer to interrogatory No. 4. On Dec'r 13th, 1881, W. P. Ware deposited $700 with us, which he said was sent to us by his father, W. J. Ware, to pay for a car-load of flour which
231 he, W. J. Ware, wished us to order for him from our house in St. Louis. W. P. Ware said that W. J. Ware was his father and had been living in Alabama, and that he had brought considerable money with him from Alabama on which he, W. J. Ware, was going into business.

Answer to int. 16. W. P. Ware said that he had the amount of $152.32 place- to W. J. Ware's credit because he said that he owed his father and that he thought that he, W. P. Ware, was going to be attached on some old debts that he had been owing for several years. W. P. Ware said that W. J. Ware was his father and he lived in Alabama. I don't know the part of the State he lived in. I don't know W. J. Ware personally, never having seen him.

Answer to int. 17. Allen, West & Bush ordered Allen, West & Co., St. Louis, to buy the car-load of flour and ship the same to
232 W. J. Ware with the $700 that W. P. Ware had deposited with them for the account of W. J. Ware for the sole purpose of buying the said car-load of flour with for W. J. Ware.

Answer to int. 18. Allen, West & Bush, by consent of all attaching creditors and T. P. Ware, purchased from United States marshall the stock of goods for which we paid $15,000, and we have owned it from the time of said purchase until we sold it to G. L. Ware, on or about the 29th March, 1882. While we owned the stock we considered the business in the name of our agent, J. Brooks Allen.

Answer to int. 19. Allen, West & Bush sold the goods on or about March 27, 1882, to G. L. Ware for $4,500, payable in four notes of $1,125 each, and payable, respectively, May 18, 1882, July 18, 1882, Dec. 18, 1882, & Jan'ry 12, 1883. These notes were secured by mort-
gage on the stock of goods that G. L. Ware owned before pur-
233 chasing Allen, West & Bush's stock and by contents of tan-yard belonging to G. L. Ware and by a mortgage on the goods themselves which we sold to him.

Answer to int. 20. We file, as Exhibit No. 2, a statement of J. Brooks Allen's account, and the same is a statement in full of all we have received and expended.

Answer to int. 21. Our agent, J. Brooks Allen, informed us that he sold the goods to G. L. Ware, and it was subsequent to our attachment, which was made in November. We took a mortgage on the goods, a copy of which is herewith filed as Exhibit No. 3, and we suppose is on record in your town.

Answer to int. 22. As stated in my answer to interrogatory No. 21, our agent, J. Brooks Allen, sold the stock of goods to G. L. Ware and took a mortgage on same. He also took an agreement from G.

L. Ware that under no condition was he to buy any goods on
234 on credit, and that if he did buy any goods on credit that then all the notes became due and we could at once take charge of the goods under our mortgage. We file with this answer a copy of the said agreement as Exhibit No. 4.

Answer to int. 23. We did employ W. P. Ware according — an agreement signed by both Allen, West & Brush and W. P. Ware, a copy of which agreement we furnish as Exhibit No. 5.

Answer to int. 24. There was no agreement before the attachment. After we had purchased the stock of goods from the U. States marshal, when we employed W. P. Ware, we told him that all we wanted was to get our money back from T. P. Ware, and that if he would help us to sell the goods and get our money back that if there was anything left we would be glad to turn it over to him for his services as per agreement in Exhibit No. 5.

Answer to int. 25. The $700 was never to W. P. Ware's
235 credit, but was handed to us in money by W. P. Ware to put to the credit of W. J. Ware as stated. W. P. Ware said this money was sent by his father to buy a car-load of flour for himself. Nothing was ever said by W. P. Ware of any fear of attachment of this $700, as it was placed to his father's credit when handed to us. We have already stated what W. P. Ware said in reference to his fears of his being attached when he ordered his balance of $152.32 transferred to W. J. Ware's credit. I stated nothing in the case of Mississippi Mills *vs.* T. P. Ware, as it was *v.* W. P. Ware. I then stated exactly what I have stated now in reference to the same matters, so far as I recollect.

Answer to int. 26. W. P. Ware's account is balanced. We owe him nothing and he owes us nothing. T. P. Ware owes us considerable, as you will see by the statement — suit. W. J. Ware
236 & G. L. Ware owes us, on joint account, $507.12. G. L. Ware owes us nothing individually on open account and we owe him nothing. I most solemnly swear that *whether* W. P. Ware, T. P. Ware, W. J. Ware, or G. L. Ware, or any of the Ware family, have a cent in our hands in any shape or form, or in the hands of any of our houses, or in the hands of any of our friends, and no one that we know of has any funds of the Wares, nor have they had, except what we have stated. We file with this answer statement of W. P. Ware as Exhibit 6, and statement of G. L. Ware as Exhibit 7.

Answer to int. 27. We have answered in previous replies to interrogatories herein how we came to have business with W. J. Ware, and you will see in the statement filed herewith all the business we have had with all the Wares. We file with this interrogatory a statement of the account of W. P. Ware and of the joint account of W. J. Ware & G L. Ware as Exhibit No. 8.

237 Answer to int. 28. I never saw W. J. Ware or had any dealing with him personally. We have had several telegrams from W. J. & G. L. Ware, and suppose they were sent to us by either W. J. Ware or G. L. Ware. No person ever gave us any reason for doing business in W. J. Ware's name.

Answer to int. 29. Since the attachment Allen, West & Bush have had no business dealings of any kind with T. P. Ware. After we heard that T. P. Ware had been attached at Crystal Springs and Hazlehurst, we were informed by Messrs. Myer, Wise & Co. that they would probably have a small balance to T. P. Ware's credit with them after his account with them was paid; so we run an attachment upon them to secure it; the balance was afterward paid to us by Myer, Wise & Co. and credited to T. P. Ware's account.

Answer to int. 30. On or about Nov. 11th, 1881, we got a draft of T. P. Ware on Myer, Wise & Co., favor G. L. Ware. The
238 draft was paid, and we placed the amount at the time to the credit of T. P. Ware. G. L. Ware informed us of our error in having put the $300 to the credit of T. P. Ware, and said it should go to his credit, as the draft was in his favor, and should have gone to his credit at the time. We were anxious to retain the draft to the credit of T. P. Ware to reduce his indebtedness to us; but, as the draft was payable to G. L. Ware's favor, we saw we could not legally retain it to T. P. Ware's credit, and so transferred it to the credit of G. L. Ware, as you will see in the statement. On the 14th of Dec., 1886, we got a draft of G. L. Ware on Lewis & Williams for $311.91 for G. L. Ware's credit; this makes the 611.91 placed to G. L. Ware's credit.

Answer to int. 31. Nobody ordered it, and it has not been done, as you will see by the statement.

239 Answer to int. 32. I, James H. Allen, am general manager of my firm of Allen, West & Bush, and have been since the firm was organized in 1877.

Answer to int. 33. Allen, West & Bush's attorney, Mr. John M. Allen, handed us a list of notes which he received from T. P. Ware. Whether he got the notes before or after the attachment I do not know. He can inform you. I file herewith a list of said notes as Exhibit No. 9.

JAMES H. ALLEN.

Sworn to and subscribed before me this 20th day of April, 1881.

[SEAL.] ALFRED INGRAHAM,
Com'r of the State of Mississippi.

STATE OF LOUISIANA, }
City of New Orleans, Parish of Orleans, } *ss:*

Personally appeared before the undersigned, duly commissioned by the execution of the State of Mississippi a commissioner
240 of deeds to reside in the State of Louisiana aforesaid, with full power to administer oaths, &c., and take proof and acknowledgment of deeds and all instruments of writing intended to be used or recorded in said State of Mississippi, James H. Allen, of legal age, a resident of the city of New Orleans as aforesaid, to me personally known as the witness named, to be examined in answer to the interrogatories attached to the commissioner hereunto annexed, who, being duly sworn to tell the truth, the whole truth, and nothing but the

L. Ware that under no condition was he to buy any goods on
234 on credit, and that if he did buy any goods on credit that then all the notes became due and we could at once take charge of the goods under our mortgage. We file with this answer a copy of the said agreement as Exhibit No. 4.

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JAMES H. ALLEN.

Sworn to and subscribed before me this 20th day of April, 1881.

[SEAL.] ALFRED INGRAHAM,
Com'r of the State of Mississippi.

STATE OF LOUISIANA,
City of New Orleans, Parish of Orleans, } ss:

Personally appeared before the undersigned, duly commissioned by the execution of the State of Mississippi a commissioner
240 of deeds to reside in the State of Louisiana aforesaid, with full power to administer oaths, &c., and take proof and acknowledgment of deeds and all instruments of writing intended to be used or recorded in said State of Mississippi, James H. Allen, of legal age, a resident of the city of New Orleans as aforesaid, to me personally known as the witness named, to be examined in answer to the interrogatories attached to the commissioner hereunto annexed, who, being duly sworn to tell the truth, the whole truth, and nothing but the

truth, deposes and says that the answers made by him to the interrogatories hereunto annexed are true to the best of his knowledge and belief; and I further certify that the answers so made by said witness were recorded by me, the commissioner, in my handwriting, at the time and read to said deponent, who acknowledged
241 them as correct and desired the same to be taken as his true answers aforesaid.

In testimony whereof I have hereunto set my hand and official seal this 20th day of April, A. D. 1882.

ALFRED INGRAHAM,
Com'r of the State of Mississippi.

Filed April 21st.
[SEAL] E. W. BROWN, *Clerk.*

STATE OF MISSISSIPPI, *Copiah County:*

I, E. W. Brown, clerk of the circuit court in and for said county and State, do hereby certify that the above and foregoing 25 pages, as numbered, contain a true and perfect copy of the interrogatories and answers thereto, together with commission, clerk's certificate, and certificate of commissioner in the case of H. T. Cottam & Co. *vs.* T. P. Ware, No. 13071 of the file of said court.

Given under my hand and official seal this Dec. 29, 1883.

[Seal Circuit Court, Copiah County, Miss.]

E. W. BROWN, *Clerk.*

Clerk's fees:

To transcribing 5,600 words, @ 10 per 100	5 60
" certificate	25
	$5 85

242 And afterwards, to wit, on the 5th day of May, A. D. 1884, the complainants filed their exceptions to certain depositions in the words and figures following, to wit:

243 *Exceptions to Depositions.*

In the Circuit Court of the United States for the Southern District of Mississippi.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

And now comes the compl't, by solicitors, and excepts to the depositions, questions, and answers of the following witnesses for defendant: Alfred Goldthwaite, James B. Reynolds, and James H. Allen, and prays that the same may be referred to a master and the depositions suppressed, and, if not wholly suppressed, that the questions and answers therein be expunged, and for particular exceptions.

1. Said depositions should be suppressed because not taken within the time allowed by law and the rules and practise of this and the State court from which this cause was transferred.

244 *Exceptions to James H. Allen's Deposition.*

1. Compl't excepts to int. 4 as incompetent and irrelevant & as seeking to vary a written instrument by parol —, and to the answer thereto for the same reasons and because it undertakes to set up a condition by parol contradictions of the written contract, and also of the answer.

2. Compl't excepts to int. 5 & answer thereto because incompetent, irrelevant, and undertakes to vary the written contract to cotemporaneous colloquium.

3. Compl't excepts to int. 6 & answer thereto because incompetent — irrelevant.

4. Compl't excepts to int. 7 because incompetent and irrelevant and as calling for the legal construction of a written instrument by parol evidence, and the answer thereto as incompetent, irre-
245 sponsive, attempting to vary the terms of a written contract by parol evidence contradicting the answer, — setting up a condition, by parol colloquium at the time of executing the written contract, variant and contradictory thereof.

5. Compl't excepts to int. 8th as irrelevant to the issue and incompetent, and to the answer thereto because irresponsive, setting up, by parol evidence, contradictions of the written contract, and also the answer.

6. Compl't excepts to int. 9th and answer thereto as incompetent and irrelevant.

7. Compl't excepts to int. 10th and answer thereto as incompetent and irrelevant, and the answer thereto is also irresponsive.

8th. Compl't excepts to int. 11 because incompetent & irrelevant, and to the answer thereto as irresponsive, attempting to vary
246 the terms of a written instrument by parol evidence, setting up a condition, by parol contradiction of the written contract, variant & from the answer, and as wholly irrelevant & incompetent to the issues made by the pleadings.

9. Compl't excepts to int. 12 as incompetent, and to the answer thereto as irresponsive & irrelevant & incompetent.

Deposition of Alfred Goldthwaite.

1. Compl't excepts to int. 3 & answer thereto as incompetent & irrelevant and because answer — irresponsive.

2. Compl't excepts to int. 4, 5, 6, 7, 8 for same reasons as to int. 3 and answer, and to answer to int. 6 because his understanding is stated and not facts.

Deposition to *James B. Reynolds.*

Compl'ts excepts to each & every of the direct interrogato-
247 ries & the answers thereto because incompetent & irrelevant.

Whereupon exceptant prays reference.

CALHOON & GREEN,
Sol's for Exceptant.

Endorsed: Filed May 5, 1884. J. M. McKee, clerk.

And on said 5th day of May, 1884, the complainant filed in said court his motion to sustain exception to certain depositions in the words & figures following, to wit:

248 In the Circuit Court of the United States for Southern District of Mississippi.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

Complainant, by solicitor, moves the court to sustain the exceptions herein to the depositions of Jas. H. Allen, Alfred Goldthwaite, & James B. Reynolds.

CALHOON & GREEN,
For Motion.
JAMES M. ALLEN, *Contra.*

And afterwards, to wit, on the 16th day of May, 1884, there was filed in said court an order of the chancery court of Copiah county, Mississippi, in the words and figures following, to wit:

249 W. P. WARE *vs.* ALLEN, WEST & BUSH.

On petition of defendants for a removal of this cause to the circuit court of the United States for the southern district of Mississippi it is ordered that the bond tendered with said petition be, and the same is hereby, approved. It is further ordered, upon the motion of defendants, that this cause be transferred and removed to said court.

STATE OF MISSISSIPPI, *Copiah County:*

I, G. F. Wolfe, clerk of the chancery court of said county, hereby certify that the above is a true and perfect transcript of an order made by the chancery court of said county at the January term, 1884, thereof as the same appears of record in my office.

Witness my hand and official seal this 3d day of May, 1884.

G. F. WOLFE, *Clk.*

250 And on the 26th day of May, 1884, an order was made and entered of record in said cause in the words & figures following, to wit:

W. P. WARE *v.* ALLEN, WEST & BUSH.

Ordered by the court that defendant- have thirty days from this date to take further testimony, and no more, and that complainant have sixty days thereafter to take counter-proof and no more, and that defendant- have sixty days thereafter, and no more, to take testimony, the last to be strictly in rebuttal.

And afterwards, to wit, on the 27th day of June, A. D. 1884, the deposition of Ben. Gerson, a witness for the defendant-, was filed in said cause and is in the words and figures following, to wit:

251 Cir. C't U. S., So. Dist. of Miss.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

All precedent formalities waived, and we agree that any commissioner for Miss. in New Orleans, La., may take the deposition of Gerson, to be read in evidence. We do not wish to cross-interrogate.

CALHOON & GREEN.

Interrogatories to be propounded *to be* to Benj. Gerson, a citizen of New Orleans, the answers to which, when taken, to be read in evidence for defendants in the above-styled cause.

Int. 1st. Are you acquainted with the parties to this suit?

Int. 2. State whether or not you saw the complainant, W. P. Ware, in New Orleans on or about the 7th of November, 1881.

Int. 3. State whether or not on that day, to wit, the 7th of
252 November, 1881, or about that time, W. P. Ware made any proposition to you about selling out the stock of T. P. Ware to you in consideration that you would secure his claim against T. P. Ware, and whether or not you offered to pay the said W. P. Ware $5,000.00 or any other sum of money, or whether or not there were any sort of propositions pending between you and said W. P. Ware about anything of this sort on or about the time referred to.

Int. 4. State whether or not you ever made any proposition or offers to W. P. Ware to buy the Chrystal Springs stock of goods of T. P. Ware or to let W. P. Ware have either five thousand — ten thousand dollars, or any other sum of money, if he would sell or have T. P. Ware sell you said stock. State whether or not there was any proposition about such a trade on or about November 7th,
253 1881, between W. P. Ware and yourself.

Cir. C't U. S., So. District of Miss.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

On this 24th day of June, A. D. 1884, by virtue and in pursuance of the consent of parties to take the deposition of Benj. Gerson, of the city of New Orleans and State of Louisiana, a witness for the defendants in the case aforesaid, on the interrogatories annexed to and accompanying this consent, I, Theodore Guyol, a commissioner for the State of Mississippi, residing in the city of New Orleans, in the State of Louisiana, duly commissioned & sworn, have caused the said Benj. Gerson, a person of sound mind & upwards of twenty-one years, to come before me, at my office, in the said city of New Orleans, and the said Benj. Gerson, being by me first duly cautioned & sworn to speak the truth, the whole truth, and
254 nothing but the truth in answer to said interrogatories, did depose and say:

In answer to interrogatory 1st: I am acquainted with both the plaintiff & defendants.

In answer to interrogatory 2d: I recollect having seen the complainant in New Orleans a short time before his failure, but cannot precise the date.

In answer to interrogatory 3d: I do not recollect of any proposition (at the time when he was in New Orleans) made to me by him about selling the stock of T. P. Ware or did I make him any offer. There never was any proposition pending between myself & W. P. Ware about anything of the sort.

In answer to interrogatory No. 4: I never made any proposition or offer to W. P. Ware to buy the Chrystal Springs stock of
255 goods of T. P. Ware or to let him, W. P. Ware, have either five thousand dollars or any other sum of money if he would sell or have T. P. Ware sell me said stock. There never was any proposition about such a trade between myself & W. P. Ware at the time I saw him in New Orleans, which was a short time before his failure.

And he hereunto signed his —.

BEN. GERSON.

Sworn to & subscribed before me this 27 June, 1884.

[SEAL.] THEO. GUYOL,
Com'r for Miss.

STATE OF LOUISIANA, *City of New Orleans:*

I, Theodore Guyol, a commissioner for the State of Mississippi, for the State of Louisiana, residing in the city of New Orleans, in said State, do hereby certify that I caused to come before me the said Benj. Gerson, at my office, in the city and State aforesaid, and he, *coming* by me first duly cautioned, sworn, & examined to
256 speak the truth, the whole truth, & nothing but the truth in answer to said interrogatories, did give the foregoing deposition; that the answers of the said Benj. Gerson were by me reduced to writing in the presence of said witness, and by me carefully read to & thoroughly understood by said witness as his deposition in said case; that he signed the same as his deposition in my presence; that the questions propounded to said witness and which he has answered are the interrogatories accompanying said consent; that said depositions has in no manner been changed or altered since the same was subscribed by said witness, but that the same has remained in my possession up to the time of sealing & delivering the same to the post office, directed to the clerk of said court.

In witness whereof I have hereunto set my hand & seal of office, at New Orleans aforesaid, this 24th June, 1884.

[SEAL.] THEO. GUYOL,
Com'r for Miss.

257 And afterwards, to wit, on the 13th day of September, 1884, the deposition of John M. Allen, a witness for the defendants in said cause, was filed in said court, and is in the words & figures following, to wit:

258 *Testimony of John M. Allen.*

W. P. WARE *vs.* ALLEN, WEST & BUSH.

On the 7th of November, 1881, I rec'd a telegram from Allen, West & Bush, by whom I was employed as their general attorney in Miss., requesting me to go to New Orleans at once. I left home on the evening of the 8th of Nov. and arrived in New Orleans on the morning of the 9th. They, Allen, West & Bush, informed me that I was wanted to take charge of a claim they had against T. P. Ware, of Hazlehurst, *of* Mississippi, amounting to seventeen or eighteen thousand dollars after allowing what we supposed the cotton in the hands of Allen, West & Bush belonging to T. P. Ware would bring. They also informed me of an arrangement they had made with W. P. Ware in reference to an additional $10,000.00
259 against T. P. Ware, and asked my advice about it, which I gave them. They then sent me to Hazlehurst, Mississippi, to confer with Mr. A. Goldthwaite, an attorney they had sent up there from New Orleans to represent them until my arrival, and Mr. W. P. Ware. I arrived at Hazlehurst late at night; was met at the train by Mr. Goldthwaite, and we were joined, as I now recollect, by Mr. W. P. Ware, near the store where the business carried on in the name of T. P. Ware was done, and we went from there to the house of W. P. Ware and had a long conversation, in which I repeated to him what Messrs. Allen, West & Bush, through Mr. Allen, of said firm, in New Orleans, had with me about their agreement and understanding with W. P. Ware, which was in substance as follows: The business conducted by W. P. Ware at Hazlehurst, Miss., in the name of T. P. Ware, was indebted to Allen, West & Bush in the sum of $17,000 or $18,000. T. P. Ware was in a failing condition.
260 W. P. Ware claimed that T. P. Ware owed him ten thousand for money loaned T. P. when he went into business by W. P., and which was represented by two promissory notes of T. P. to W. P. for $5,000.00 each, which had been turned over by W. P. to Allen, West & Bush, and that Allen, West & Bush had given W. P. the paper here now sued on, and that it was understood that this ten thousand was to be by Allen, West & Bush included in their account against T. P. Ware, and that W. P. would have T. P. sell out to Allen, West & Bush or assign and prefer them, or in some other way have T. P. Ware secure Allen, West & Bush for their debt and this ten thousand dollars, and that when this was done that Allen, West & Bush were to pay to W. P. the ten thousand dollars, provided they made the money on both claims out of T. P., and that, if necessary, T. P. was to abscond and leave the country, but that this ar-
261 rangement was not to be binding on Allen, West & Bush unless it met my approval, as their attorney, and that if it did not

meet my approval it was to be declared off or cancelled. Mr. Ware agreed that this was the contract or understanding between himself & Allen, West & Bush. I then told him and Mr. Goldthwaite, while in his presents, about the same; that if T. P. failed owing a large number of debts that must go unpaid and Allen, West & Bush should appear as prefer-ed or secured for a debt of $27,000 or 28,000 thousand dollars it would certainly be contested and closely scrutinized, and that when it was ascertained that ten thousand dollars of that debt was represented by a debt claimed to be due them on account of notes purchased by them from W. P. after they, Allen, West & Bush, knew T. P. Ware was in a failing condition, and when the relationship between W. P. & T. P., both in blood and business,
262 was known, that I was satisfied it would defeat not only the claim for the $10,000, but would most probably defeat the whole of Allen, West & Bush's claim, and that, under these circumstances, while I would like very much to accommodate and help him to get his help, yet I could not advise Allen, West & Bush to mix their claim up with his in any way, and that he must release them from the agreement. The paper sued on or a copy of it had been shown me by Allen, West & Bush in New Orleans. W. P. Ware and myself argued this question some time in his house, he insisting that Judge W. P. Harris, of Jackson, was his att'y, and Judge Harris said they—Allen, West & Bush—could include his claim in theirs and collect it without any trouble, and that Judge Harris was employed by him to help try it. I finally told him that I had great con-
263 fidence in the judgment and legal ability of Harris, and that his opinion would have very great weight with me, but that I did not think it could be done. He then said he would leave the matter to Judge Harris, and if he did not say it would be safe he would release Allen, West & Bush from the agreement; and it was finally agreed that I should go to Jackson and consult Judge Harris about it, and that we would take whatever course he advised, and that if he advised against it he, W. P., would release Allen, West & Bush from their agreement. When this was determined on Mr. Goldthwaite went with me to the depot, and I went on an accommodation freight train, as I now remember, to Jackson. This train passed Hazlehurst some time between midnight and day. I was in Jackson on the 10th of November, and had a long conference with Judge W. P. Harris about the matter, and he concurred ex-
264 actly in what I had told Mr. W. P. Ware, and said that, while he would like very much to see W. P. Ware get the ten thousand dollars, yet he could not advise Allen, West & Bush to mix their account with that claim; that he thought they would most probably lose it all; and several plans were suggested or spoken of by Judge Harris and myself in trying to devise some plans by which W. P. Ware could get the money, but finally Judge Harris remarked that he could not see how it could be done; that connected as W. P. Ware & T. P. Ware —, taken in connection with the history of their business operations at Hazlehurst, would most probably defeat any conveyance or arrangement made to secure a debt due from that business to W. P. Ware, although he

said W. P. Ware insisted to him that the debt was due him, but that he was not fertile in his resources for concocting schemes to baffle or defeat creditors, and could devise no plan for W. P. Ware
265 to pursue unless he could sell goods and get the money in hand in the ordinary course of business. I then suggested to him that I must do something to save my claim, and he said yes; he thought Allen, West & Bush had better attach for what was really due them. I then made arrangements to make my bond for an attachment, and returned to Hazlehurst and found *that* several drummers and lawyers with claims on T. P. Ware threatening attachments and all very uneasy, so much so that I found it almost impossible to have a private interview with W. P. Ware as all of them seemed to suspect me, and knowing I had a large claim they all seemed to be afraid I would get in ahead of them in some way. We had several meetings of creditors that day, and finally it was agreed that all the creditors who were present or represented and W. P. Ware would go to New Orleans and see if we could
266 not pursuade Allen, West & Bush to furnish money to pay 33⅓ cents on the dollar on the debts then due and let the creditors extend the balance until spring. I did not have much idea Allen, West & Bush would do it, but I was anxious to get that crowd away from Hazlehurst, and I advised all to go; it was understood that we would go and all preparations made. Mr. W. P. Ware called me into the store that night—for we were to go at night—and told me he was not going. I insisted that he should go and that it was the only chance to get rid of the crowd of creditors present. He said, "No; they just want to get me away to attach me. The operator told me of various telegrams that had been sent giving instructions about attachments, bonds, &c., and they are now just trying to get me away to attach me."

I told him what Judge Harris said or that he agreed with
267 me about the impropriety of Allen, West & Bush attempting to collect the amount claimed to be due him. We then went to attend another meeting of the creditors. W. P. Ware said he still thought I might save his debt, but said something about Mr. J. H. Allen having told him that if it was decided we could not do that that he, Allen, would rather give him some part of what he recovered on the debt of Allen, West & Bush if W. P. would help save it. At the meeting of creditors that night Mr. Ware informed them that he could not go to New Orleans that night, because he did not have his statements ready to make an exhibit to Allen, West & Bush to get the money from them to make the cash payment. I, with others present, insisted that we should all go that night, but W. P. Ware said he would go the next night, but not before. This meeting was kept up for some time, and it was finally agreed
268 that all hands would go to New Orleans. The next night and just before time for the train to pass going north I feigned sickness and said I would go to my room, and bade them good night, took the train for Jackson, and got back before day with my attachments and the U. S. marshal, and had it levied on the stock in the store at Hazlehurst. Mr. W. P. Ware and T. P. Ware were about

the store door when the levy was made; this was the 1st time I ever saw T. P. Ware that I know of. After the levy was made W. P. Ware asked me if I attached for his debt, too. I told him I did not, and my recollection is that he said if he had known that he would have had an assignment made the night before, and that he came near doing it any way, but he then spoke again of Mr. J. H. Allen having said if he did not try to collect his claim that he would
269 rather pay him something to secure his services in helping collect what was really due Allen, West & Bush. In all my talk with W. P. Ware about that stock of goods levied on he spoke of it as if he was the owner or as if he had full control, and would speak of the creditors attaching him, &c., but he would sometimes say what he would do about it and sometimes say what he would make Thom. do. I was somewhat excited then about my attachment and my contest with the other creditors, and I forgot about W. P. Ware's paper on which he now sues, and I was with Mr. Ware frequently. He employed me to help try a claimant's issue for his bro., G. L. Ware, and we were together and talked together frequently about all this business, but I never heard anything about his making any claim that Allen, West & Bush owed him anything on this paper until more than a year after this attachment
270 was sued out. About the 4th day of December, 1882, I was at Hazlehurst and settled a matter of business with G. L. Ware; T. P. & W. P. had something to do with the settlement; it was the settlement of an amount due Allen, West & Bush by G. L. Ware for some of the T. P. Ware goods bought by them and sold to G. L. Ware. When this was settled W. P. Ware was drinking, and took — around to the saloon and said he thought Allen, West & Bush ought to give him something, as he had been instrumental in their getting most of their money, and they ought to pay him something, and he said something about Mr. Allen having promised him something if he would do it. I told him that he and me had left the matter about that written agreement to Judge Harris, and Judge Harris had decided that we could not afford to undertake the collection of his claim. He said yes, but Allen had said if we could not collect
271 that that he, Allen, would be willing to pay him something to help him collect Allen, West & Bush's claim. He was in liquor and I did not want to talk with him about it, and I told him Allen would do what was right about it, and that I would see to it, and we parted; this was about the 4th of Dec., 1882. When Mr. A. Goldthwaite was about leaving Hazlehurst for New Orleans he handed me the statement of T. P. Ware's account and several envelopes, inclosing papers; the most of them were letters to friends of Allen, West & Bush up the road, asking them to sign bonds for them if necessary. I did not have any use for them, and put them in my valice with other papers, and do not know that I ever looked at them. I thought the notes of T. P. Ware had been returned to W. P. Ware, until after this suit was brought; then I got to
272 inquiring into that. Messrs. Allen, West & Bush said they gave the notes to Mr. Goldthwaite and he gave them to me, and on looking among the papers given me by Mr. Goldthwaite at

Hazlehurst before the attachment was sued out I found these notes in one of the envelopes. I did not know I had them, and would have returned them to W. P. Ware while at Hazlehurst, when the attachment was sued out, if I had known I had them, and it was in this way that they were not returnrd. They were just in the condition they were when filed with the answer when I found them, with the endorsement of W. P. Ware on them. I do not say positively that I had never seen these notes before, or that my attention had not been called to the fact that I had them, but I have no recollection of it now if it was so called. I know Mr. W. P. Ware talked to me about it after the attachments—about his loosing
273 the money Thom. owed him. He did not seem to regard the notes as worth anything, and spoke of them as being lost, but said, as I now remember, that he had some money; that he was not as flat as some of them supposed, or words to that effect. He and me discussed, when I returned to Hazlehurst from Jackson the first time, the fact that he was selling a large amount of goods for cash every day and not paying out the proceeds, and we talked of trying to keep off the attachments until he could collect his debt in that way. This is about what I remember of the transaction now, except that when I was in New Orleans with W. P. Ware. After I had bought the T. P. Ware stock for Allen, West & Bush, at the time we made the contract with W. P. Ware, as shown by Exhibit K to J. H. Allen's deposition, there was some talk of a
274 sale of the goods at some future time to W. P. Ware or on what condition he could have them after paying Allen, West & Bush so much money, and he spoke of selling off and getting part of the money and then getting money from his father, but never intimated that Allen, West & Bush owed him anything.

Complainant objects to the foregoing statement of John M. Allen as irrelevant to the issue and as in great part hearsay, — propound the following cross-interrogatories:

X Int. 1. Did you not arrive in Hazlehurst from New Orleans on the night train on November 9th, 1881, and were you not, about midnight on that night, at the residence of W. P. Ware with Mr. Goldthwaite; if yea, why did you go to his house? At what point did you first see him and Goldthwaite that night and what
275 hour, and was the meeting by accident or appointment?

X Int. 2. Was not your object in going to Hazlehurst that night to attach, and was it not the understanding that W. P. Ware was to procure for you the sureties or good attachment bond, and was not the result of the conference at Ware's house on this subject that there was no instant danger of attachment by other creditors for a day or two?

X Int. 3. At that conference at Ware's house did you not say you would come to Jackson and consult Judge Harris and determine whether it would be safe to carry out the sale, and if not you would attach according to the agreement between W. P. Ware and Allen, West & Bush, and did you not come to Jackson the next day or the

next night and see Judge Harris on the subject? Give accurately your talk with Judge Harris.

276 X Int. 4. Before you left for Jackson, after the conference at Ware's house, did not W. P. Ware tell you that if you and Judge Harris thought the bill-of-sale plan better than attachment he was willing to fix it that way & was willing to leave it all to Judge Harris as to the mode of proceeding, and did you not answer that you thought the bill of sale the best and you could include the two $5,000 notes in it? Did you not also say a half a loaf was better than no bread, and that Allen, West & Bush had better be satisfied with $8,000, giving Ware the other $10,000, and that if you determined to attach it could be arranged in the same way?

X Int. 5. Say when, where, and in whose presence W. P. Ware ever intimated any wiilingness to abandon his claim to the $10,000, and say how he came to intimate it, and give his words, and

277 say what led up to it and what was the consideration to him for such an abandonment.

X Int. 6. Did you not say that if you attached and T. P. Ware would agree to sale in bulk Allen, West & Bush could buy the goods at a figu*er* which would save them and W. P. Ware's $10,000 also, and that if you attached you would not attach for the full amount of both Allen, West & Bush's claim and the $10,000, as that would look like a fraud?

X Int. 7. Is it not a fact that T. P. Ware did not defend your attachment, and that he did consent to a sale in bulk, and that Allen, West & Bush did buy at the sale in bulk?

X Int. 8th. In order to get time for you to come to Jackson to consult Judge Harris, did you not get W. P. Ware to propose

278 a sham offer of compromise to the other creditors of T. P. Ware, to be based on acceptance of Allen, West & Bush, and did you not tell representatives of other creditors that this could be done, and that T. P. Ware's book-keeper would set about making out a list of claims, &c., for assignment to Allen, West & Bush as consideration for such acceptances, and was not a meeting with H. C. Conn and att'ys of other creditors to meet at Conn's office and select some one or more to go to New Orleans with W. P. Ware to arrange this, and did you not ask W. P. Ware to make a simulated objection to this arrangement so as to delay matters until the northbound train came by, and did he not accordingly do so, and just before that train came did you not, in the meeting of the creditors, pretend sickness and say you would go to bed, but, in fact, go to Jackson and attach?

279 X Int. 9. Before leaving Hazlehurst the night you sued out the attachment, did you not arrange with W. P. Ware that if the other creditors showed any disposition to attach that night he should prevent the sheriff from getting inside the store until you returned with your writ and the marshal*l*, but to try & let the marshal*l* in first and then to appear to be very angry with you so that the others would not suspect the collusion, and accordingly were not you and the marshal*l* let in first before the sheriff and angry words — between you and W. P. Ware, and finally friends, made over a

drink, and did you not arrange that T. P. Ware was to be under the town bridge, below the depot, with the store key when the train should come with you and the marshall and come out with the key for the marshall as you and he passed by towards the store
280 so you could get the first levy over the sheriff, and did not this accordingly occur?

X Int. 10. While you were in Hazlehurst on 10th or 11th November, 1881, and at night, in the store-house occupied by T. P. Ware and in the presence of G. L. Ware, did not W. P. Ware tell you that if you were not going to attach, but let the other creditors get ahead of you, to give him up his 10,000 notes and he would protect himself; and did you not answer that you were going to attach, but if you did not, and if Allen, West & Bush got nothing, they would still have to pay him the $10,000?

X Int. 11. The next morning after the attachment did you not ask W. P. & T. P. Ware to go to W. P. Ware's house and remain there until you came, & say you would talk among the cred-
281 itors that you were sorry you had to attach; that T. P. Ware had been a large shipper of cotton, and you had a kind feeling for him and believed you would go and see him and say you were only acting as attorney, and sympathize with him, and did you not say you would do this to deceive the creditors, so as to get consent to a sale of the goods?

X Int. 12. The day after the attachment was levied did you not go to W. P. Ware's house and ask him questions as to the value of his stock, &c., and say that if he could have the best notes due T. P. Ware transferred to Allen, West & Bush it would be well, as they were apt to loose, having the $10,000 to pay to W. P. Ware, besides their own debt; and were not, in fact, several notes so transferred after the ledger footing up about $1,600; and did you not direct that these transfers be not noted on the books, but that they
282 be subject to a final settlement between Allen, West & Bush & W. P. Ware?

Int. 13. Did you not agree with W. P. Ware that your principals would try to compromise his debts & pay the compromise out of the $10,000 they owed him?

X Int. 14. Did you not propose to W. P. Ware that if his father would buy the attached stock for $18,000 Allen, West & Bush would receive $8,000 in full for it, liquidating that $10,000 debt to W. P. Ware with the remainder?

CALHOON & GREEN, *P. Q.*

Ans. to cross-int. 1st. I arrived at Hazlehurst from New Orleans on the night of Nov. 9th, 1881, at about 11 or 12 o'clock. I was about midnight that night at the residence of W. P. Ware, with Mr. Goldthwaite. I was met at the depot by Mr. Goldthwaite, and he went with me uptown near the store of T. P. Ware, where we
283 were joined, as I now remember, by W. P. Ware. I had made no appointment myself to meet them, but had gone there to see them, and I suppose they were looking for me. I went to W. P. Ware's house to talk with him about the business of Allen, West &

Bush with W. P. & T. P. Ware. The meeting was not, I think, by accident nor was it by appointment, so far as I know. They were looking for me up and I supposed Mr. Goldthwaite was to meet me at the train and to take me where Mr. Ware was. I reckon that was understood between them.

Ans. — X int. 2. My object in going to Hazlehurst that night was to confer with W. P. Ware about the debt of Allen, West & Bush against T. P. Ware and try to secure it in some way—I had not then determined how—and also to inform W. P. Ware that Allen,
284 West & Bush could not undertake the collection of his claim against T. P. Ware. I thought it was probable I would attach, but had not determined what I would do. I expected to survey the field when I got up there and be governed by circumstances. It was not my understanding that W. P. Ware was to procure sureties on the bond for me to attach. The result of the conference at Mr. Ware's house between W. P. Ware, Mr. Goldthwaite, and myself was that it was not probable anybody would attach for a day or two, until I could go to Jackson and confer with Judge W. P. Harris and return.

Ans. to X int. 3rd. At the conference at Mr. W. P. Ware's house I did not say I would come to Jackson and consult Judge Harris and determine whether or not it would be safe to carry out the sale; and, if not, that I would attach according to the agreement be-
284 tween Allen, West & Bush & W. P. Ware. I did say, however, at that conference that I would come to Jackson and confer with Judge Harris as to whether or not Allen, West & Bush could with safety undertake to collect W. P. Ware's claim with theirs, and that if Judge Harris gave it as his opinion they could do it without endangering their claim that I would undertake to do it in such manner as Judge Harris thought best, although my judgment was against it. I came to Jackson on an accommodation freight train that same night, the 9th of November, arriving hear-soon on the morning of the 10th of Nov., and I did see Judge Harris on the subject and had a good long talk with him. I do not know that I can give accurately all that was said between us on the subject, but I can give the substance of what was said. I told Judge Harris about the indebtedness of T. P. Ware to Allen, West & Bush, and that T. P. Ware
286 was about to fail, and W. P. Ware's anxiety to have Allen, West & Bush include an indebtedness of $10,000 claimed to be due him by T. P. Ware to him in their claim against T. P., then for T. P. to sell out to Allen, West & Bush or assign and prefer them or have them attach him for the full amount of their claim, and W. P. Ware's included, and in this way save what T. P. Ware owed Allen, West & Bush and W. P. Ware, both, and I informed him that Allen, West & Bush had agreed with W. P. Ware to try to save his claim in this way if I thought they could safely do —, and that I had informed both them and W. P. Ware that I did not think they could safely do so, but that W. P. Ware had insisted that they could do it, and we had agreed that I should come to see him, Judge Harris, and be governed by his judgment in the matter, and that if he said they would be safe in attempting to do it we would try

287 it on whatever plan he suggested. Judge Harris said that Ware had talked with him some about it, but that in view of all the facts, the connection between T. P. Ware and W. P. Ware in business, and their relationship by blood, and the large amount due by T. P. Ware to Allen, West & Bush, that it was then evident T. P. must fail very soon. If Allen, West & Bush came up as his creditors for 27 or 28 thousand dollars other creditors who lost money by T. P. Ware would have this large claim closely scrutinized, and would, in all probability, resist its payment or collection, and whenever it was shown that $10,000 of it was for money paid out by Allen, West & Bush for a claim of W. P. Ware against T. P. just on the eve of T. P.'s failure it would make rather an ugly case, and would, he thought, most probably defeat the whole of
288 Allen, West & Bush's claim, and that while he would like very much to see W. P. Ware get the money that he said was due him, yet he could not advise Allen, West & Bush to attempt to collect it for him or include it with their claim. We talked at considerable length about the matter, and I suggested various ways by which W. P. might get some money out of the business by a sale of goods to some one else, and that they were selling largely every day and paying nothing, and W. P. could appropriate it in that way, &c. After suggesting several things of this sort, Judge Harris remarked that he could not say what was best to be done about that; that he was never fertile in his resources for concocting schemes for defeating or defrauding creditors. I then told him that I must secure my debt—meaning the debt of Allen, West & Bush—anyway, and that I thought I would attach for it. He said yes, if he
289 were me he would attach for them, but he would not try to collect the $10,000 for W. P. Ware with it; that it would endanger the whole amount. That is about the substance of that conversation as I remember it.

Ans. — X int. 4. In answer to interrogatory, I say I did not say any such thing; nor did W. P. Ware say any such thing, except he did say he was willing to make a sale or an assignment or to do anything else Judge Harris and he might agree on if we agreed we could save his claim, but I said nothing about taking $8,000.00 and giving him ten, or half loaf being better than no loaf. There was no such talk. I did not tell him that I thought a bill of sale best, for I never favored that, nor did I ever say to him that his debt could be included. I always advised against that, and only
290 agreed to consent to it in the event Judge Harris said he was sure it could be done without risk, and that was Ware's proposition, to leave it to Judge Harris.

Ans. to X int. 5. W. P. Ware made the proposition to abandon his claim against Allen, West & Bush at his house, in his parlor, in the presence of Mr. Alfred Goldthwaite, on the night of the 9th of November, 1881. It came up in this way: I informed him that Mr. Allen had told me that the arrangement between them when the paper sued on in this case was given was to be dependent on my approval of their plan, and I told him that they could not collect his debt, and that the arrangement did not meet my approval, and

that if it was undertaken they would loose their whole debt. He argued with me that they would be safe to undertake the col-
291 lection of his claim, and said Judge Harris said there was no trouble about it, and after discussing the matter for some time he agreed to leave the matter that was at first to be left to me to Judge W. P. Harris, who he said he had employed to help save his debt, and that if Judge Harris said it was not safe or if Judge Harris did not say it was safe he would release them from their promise to do it, and to that I finally agreed and came to Jackson at his request to see Judge Harris. I do not know of any consideration to him for such abandonment, except the partial fulfillment of a promise he had made Allen, West & Bush when the paper was executed.

Ans. to X int. 6. I have no recollection of a sale in bulk ever having been mentioned before the attachment. I never said at any time that "if W. P. Ware would agree to a sale in bulk that
292 Allen, West & Bush could buy the goods at figures that would save their debt and W. P. Ware's $10,000 also." I did say that to attach for Allen, West & Bush's claim and the $10,000 besides would look like a fraud.

Ans. to X int. 7th. It is a fact that T. P. Ware did not defend my attachment suit. W. P. Ware, for T. P. Ware, as I now remember, and all the other attaching creditors, or at least all who had attachments on the Hazlehurst stock, did agree that Allen, West & Bush should take the Hazlehurst stock for $15,000.00, the money to stand in place of the goods. We thought that full value for them. I offered to give anybody 1,000 dollars who would take them off our hands. The goods were not sold, but on this agreement of parties they were turned over to me for Allen, West & Bush, and I settled with the parties having attachments older than mine.

293 Ans. to X int. 8. I did not do any of the things inquired about in this interrogatory, except that on the night of Nov. 11th, when a meeting of creditors and their representatives who were present was being held in H. C. Conn's office, I did feign sickness just before the train came along going north, and asked them to excuse me and said I would go to my room, as I saw they were not going to accomplish anything that night. I went to my room and then to the train and to Jackson that night. This was the day after I had been to Jackson to consult Judge Harris. I went to Jackson on the night of the 11th and sued out the attachment, got the U. S. marshall and got back before or about day and had the attachment levied.

Ans. to X int. 9th. There was no such arrangement or agreement between W. P. Ware & myself as that inquired
294 about in this interrogatory. I had no sort of arrangements with W. P. Ware about where he was to be or how the levy was to be made or the door opened, or anything of the sort. When I got to the store I told the marshall to break the door down, and he or me—one—called for a key, and T. P. Ware was present and gave the key to the marshall is my recollection about that. After the levy was made W. P. Ware said to me in the presence of a crowd that I had played hell, and that he had a damned good notion to defend

the store with a shot-gun, or something of that sort, and I made some short reply to him about being responsible for what I had done and not fearing his shot-gun, or something of that sort, but we never made friends over a drink about that. I thought Ware was feigning his anger and I knew I was not mad at all

295 Ans. to X Int. 10. No such conversation ever occur-ed between W. P. Ware and myself at any time or place or in the presence of anybody. I never had a conversation with W. P. Ware in the presence of G. L. Ware before the attachment was sued out that I have any sort of recollection of. I do not think I knew who G. L. Ware was at that time.

Ans. to X Int. 11th. I do not remember to have said anything to W. P. & T. P. Ware about going to W. P. Ware's house and staying there until I came; I may have done so, but do not remember it if I did. I have no recollection of talking about sympathizing with them, but I did talk to the other creditors, as if I did not know whether the attachments would be sustained or not. I did not disclose my hand to the others, but I did not say anything about

296 doing this to deceive creditors to get consent to sale of goods. I know this.

Ans. to X Int. 12. The day the attachment was levied I went to W. P. Ware's house to ascertain from him where the books of T. P. Ware were, because I wanted to have parties garnisheed whose names were on the books, because I did not think the stock we had levied on would pay our debt. I did not say we were likely to loose, having the $10,000.00 to pay W. P. Ware. I never thought of such a thing. My recollection is that Mr. Ware assured me that the books would not be gotton by the other creditors, and that he did not tell me where they were, but did turn over to me a lot of notes, the amount of which I do not remember, but I sent them to Allen, West & Bush, at New Orleans, and instructed them to notify the parties that owed them that they held them. I gave no directions

297 about not having them entered on the books.

Ans. to X. Int. 13th. Never made any such agreement with W. P. Ware in my life, nor was any such thing ever mentioned between W. P. Ware and myself. W. P. Ware never intimated to me in all the conversations that we had about this business, after the attachment, that Allen, West & Bush owed him anything until more than a year after that, when I had settled the matter between G. L. Ware and Allen, West & Bush, as referred to in my original examination; then, for the first time, W. P. Ware told me that he thought Allen, West & Bush ought to do something for him, as he had been instrumental in aiding them to get their money, and that Mr. Allen had promised him something in the event he did that, but he did not make any claim to ten thousand dollars then, but said he thought he ought to have something.

298 Ans. to X. Int. 14. I never made any such proposition to W. P. Ware, nor was such a thing ever mentioned or hinted at between us. My recollection of the proposition made to W. P. Ware was that if he would go into the store after Allen, West & Bush bought the stock and work for them in disposing of the stock

they would either pay him $125.00 per month for his services or permit him to take what remained of the stock after paying off the debt due Allen, West & Bush by T. P. Ware and the debt due Hill, Fletcher & Co., which was a prior encumbrance on the goods that Allen, West & Bush had to pay, and the cost, and it was to be optional with W. P. Ware which he would do; but in all the conversations with W. P. Ware on that subject he never intimated that he had any claim against Allen, West & Bush, nor did I ever recognize him as having any. He owed me $200.00 atty's
299 fee in case of G. L. Ware, in which he employed me, and I compromised it for $100.00, and he got G. L. Ware to settle it in my settlement with him for Allen, West & Bush; but he had not, up to that time, spoke of having any claim against Allen, West & Bush.

JOHN M. ALLEN.

THE STATE OF MISSISSIPPI, *Lee County.*

This day personally appeared before the undersigned, clerk of the circuit court of said county and State, John M. Allen, who, being by me duly sworn, says that the foregoing testimony, commencing on page 1st and running to page 38, with the exceptions of the cross-interrogatories, is true to the best of his knowledge & belief.

Sworn to & subscribed before me this Aug. 20th, 1884.

R. D. PORTER,
Clerk Clerk *Circuit Court Lee Co., Miss.*

300 And on said 3rd day of September, A. D. 1884, the complainant filed *their* exceptions to the deposition of John M. Allen, which is in the words and figures following, to wit:

301 *Exceptions to Deposition of John M. Allen.*

Circuit Court of the United States for the Southern District of Mississippi. In Equity.

W. P. WARE
vs. } 372.
ALLEN, WEST & BUSH

And now comes the complainant, by solicitors, and excepts to the deposition of John M. Allen, taken on behalf of defendants, and prays that the same be referred to a master and suppressed in whole or in particulars specified as follows:

1. So much of it as details what Allen, West & Bush told witness in New Orleans as hearsay & incompetent.

2. Witness' advice to Allen, West & Bush as immaterial, incompetent, & hearsay.

3. So much of it as expresses that there was any oral understanding or agreement other than or different from the written contract—Exhibit A to bill.

4. The conversation about Judge Harris and with Judge Harris.

302 All the foregoing is excepted to because irrelevant, incompetent, and illegal, and the whole deposition is excepted to for the same reason.

Wherefore complainant prays reference.

CALHOON & GREEN, *P. Q.*

And on said 3rd day of September, A. D. 1884, the complainants in said cause filed *their* motion to suppress the deposition of Jno. M. Allen in the words and figures following, to wit:

303 *Motion to Sustain Exceptions to John M. Allen's Deposition.*

In the Circuit Court of the United States for the Southern District of Mississippi.

W. P. WARE
vs. } 372.
ALLEN, WEST & BUSH.

Complainant, by solicitors, moves the court to sustain his exceptions to John M. Allen's deposition.

CALHOON & GREEN, *P. Q.*

JOHN M. ALLEN, *Contra.*

Endorsed: Filed Sept. 3, 1884. J. M. McKee, cl'k.

And afterwards, to wit, on the 19th day of October, 1884, the deposition of W. P. Ware, a witness for complainant in said cause, was filed in said cause, and is in the words and figures following, to wit:

304 Circuit Court United States, Southern District Miss., Equity Side.

W. P. WARE
vs. } 372.
ALLEN, WEST & BUSH.

Came the parties, by attorneys, & waived all precedent formalities, and waived all question as to deposition being taken out of time, and agreed that depositions for the complainant should be now taken before L. F. Childs without any *dedimus potestatum*, and that the said Childs should administer the oath to witness in his capacity as deputy chancery clerk in Hinds county, State of Mississippi, and that the depositions so taken should be certified by him & handed to the clerk of the circuit court of the United States of the southern district of Miss. to be filed in said cause, & and the

same to be read in evidence, subject to objections for competency and relevancy only.

JOHN M. ALLEN,
Att'y for Def't.
CALHOON & GREEN, *P. Q.*

305 In pursuance to the annexed and foregoing agreement, personally came before me the following witness, to wit:

W. P. WARE, being duly sworn, deposes as follows, to wit:

Int. 1st. Are you the complainant in this cause?

Ans. I am.

Int. 2nd. Give a detailed statement, a history, of the subject-matter of this suit, as accurately as you can recollect.

Ans. I think it was in fall of 1880 I went to Mr. J. H. Allen, of firm of Allen, West & Bush, for T. P. Ware to borrow $7,500. Allen asked me what T. P. Ware wanted with that amount of money in September; that if there was any debts pressing. I told him
306 confidentially that T. P. Ware owed me some several thousand dollars; don't remember the amount, and that he wanted to pay me $5,000 of the $7,500; he refused to advance that amount of money, but advanced $3,000, with the understanding with me that if T. P. Ware should get into trouble any time in the future that I would not take the advantage of him in collecting my claim against T. P. Ware.

During the next season T. P. Ware's losses on cotton was very heavy, and in the spring of 1881 I received a letter from Allen, West & Bush asking me to come to New Orleans. Mr. Allen showed me a gross statement of T. P. Ware's account, showing that T. P. Ware was indebted to him of about $15,000. At that time T. P. Ware's books showed that he was indebted to Allen, West & Bush considerably less—say about $8,000. He insisted that I should have an itemized statement made out from T. P. Ware's books
307 and compare with his books. We found a discrepancy of some considerable amount, and Mr. Allen, of the firm of Allen, West & Bush, insisted on a written agreement with T. P. Ware that in the event that he got into trouble during the next fall or winter that the stock of goods, books, notes, and accounts should be turned over to Judge Mays to dispose of for the account of Allen, West & Bush, with whatever balance T. P. Ware owed me to be included.

This arrangement was made with Judge Mays, and he held T. P. Ware's obligation until after T. P. Ware was closed by attachment; but some few days before Allen, West & Bush gave me their note or obligation for the amount sued upon I received a letter from Mr. Allen, of the firm of Allen, West & Bush, asking me to come to New Orleans and fix up that matter. I suppose that he wanted to
308 make this transfer above spoken of, but before going I went to Jackson to see my attorney, and he advised me that I might sell theis claim to Allen, West & Bush straight out, and that they could use it against T. P. Ware & either by sale or assignment or

attachment. He also wrote to Mr. Allen to that effect. I delivered Mr. Allen Judge Harris' letter; that he was perfectly willing to include this claim in buying out T. P. Ware's business, but refused to pay me anything until after this case was decided. He seemed to think that there might be some trouble in collecting this amount. I then told Mr. Allen unless he paid me $10,000 for the two notes I held against T. P. Ware that I would return & have T. P. Ware to make a general assignment. He insisted that his claim & my claim should be paid first, as it was for money and not for goods, and finally said that he would give me a draft on their Mo-
309 bile house for $10,000, and for me to leave the draft with him, let him send it to Mobile & collect the $10,000, to be held by him until after he got through with the assignment or sale or attachment with T. P. Ware.

He instructed Mr. Reynolds, his book-keeper, to draw up a receipt for the $10,000 as though it had been paid to me. Mr. Reynolds did so, and I refused to sign the receipt. He said then that we would have to each of us take care of our claims. I left him with that understanding, & he followed me, overtaking me near Ben. Gerson's office. He asked me if I intended to make Gerson any proposition. I told him that I had not decided what steps I would take. He insisted then & there that I should go back to his office; that we had always been friendly & he knew that we could come to
310 some agreement by which we could both get our money. I went back with him. He made me several propositions, which I refused to accept. He asked me then to state some way of settling this matter & if he could not accept it the matter would be ended.

I told him I had but one proposition to make; that was, if he would give me his firm's note, payable 90 days after date, provided he was not defeated in the suit against T. P. Ware, that I would transfer the two notes I held against T. P. Ware to them, & would also assist him in making bond to attach T. P. Ware. He instructed his book-keeper to draw up this note & stated that was all that he wanted. I returned home the same evening with his note, & a few days after—probably the next day or next night—a Mr. Goldthwaite came to Hazlehurst, stated that he was a lawyer sent by Mr.
311 Allen to sue out the attachment that was spoken of if the business was in any immediate danger, but if it was not he would wait for Mr. J. M. Allen. I think on the next night, or probably the night after, Mr. Goldthwaite went to my house and stated that Mr. J. M. Allen would be up that night, & that they wanted to have a talk with me at some private place, and suggested my house. I think about 12 o'clock Mr. J. M. Allen arrived at Hazlehurst, & then Mr. Goldthwaite & myself went to my house. Mr. Allen stated that he knew but very little about the business; he wanted me to tell him all about it, which I did. He then said if the business was in no immediate danger that he would go to Jackson and return the next day, I believe, and he left the same night; said that he wanted to see Judge Harris. After he
312 returned he found a great many of T. P. Ware's creditors

there talking about attaching the business. He & I had a talk about delaying this matter some way, and it was suggested by either him or myself that there should be some proposition made to these creditors by which he could get back to Jackson and sue out his attachment.

I made a proposition to have all the notes and accounts belonging to T. P. Ware drawn off & sent to Allen, West & Bush, to be used as a collateral to borrow money to pay off these creditors at 33⅓ cents on the dollar, I believe.

This proposition was accepted by the creditors, and the two bookkeepers went to work on the accounts, finishing up just about night. Mr. J. M. Allen went home with Mr. Miller that evening and remained there until late. When he returned he got out with
Mr. Miller, went into the store of T. P. Ware, & asked me
313 about the accounts & about a meeting which we were to
have to select some of the creditors or all to go to New Orleans to consum-ate this matter with Allen, West & Bush, & that he would not go; that he would come to Jackson, get out his attachment, and come back on first train.

I told him I did not like the way things were going on that night, and if they were not going to carry out their agreement with me to give me up my notes and I would take care of myself.

Mr. Jno. Allen remarked that the firm of Allen, West & Bush was never known to go back on any agrement, or something to that effect. We then went to Mr. Coon's office & talked about going to New Orleans, and some of the creditors refused to go.

Mr. J. M. Allen excused himself; said that he was unwell
314 & would go to his room, but he and I had had a previous
understanding that he was to go to Jackson and get out his attachment. When he returned with the marshal I met him at the depot. I walked with him to the store & he asked me where T. P. Ware was & if any writ or any attachments had been run on the stock. When we got to the door we found a deputy marshal and the sheriff waiting to get in the store to run their attachment. Mr. Allen asked me for the key. I gave it either to him or to the marshall. He failed to unlock it; they called on me to unlock the door, which I did, opening the door to the right. I held to the left of the door to prevent the sheriff from getting in first. I am not sure whether it was before the attach- or about the time of it Mr. J. M.
Allen said to me to show that I was in bad humor with
315 him for levying this attachment that the other creditors
might not suspect something.

After we went out of the house there was some words which we both understood. Some time the next morning Mr. Allen told me that he wanted to see me some time that day at my house.

I think it was in the afternoon he went there, asked me a great many questions about the value of the stock that he had levied on, and if the stock would bring $20,000, sold at sheriff's sale. I told him I did not think it would; that $15,000 was probably as much as he would get for it.

He asked me where the notes and books could be found. I told him the books were in the store, & that $1,600, or about that—notes I held in the house that had been transferred to me before I went to New Orleans. He asked me to get
316 those notes, which I did, and he led me to believe or said to me that these notes belong- to Allen, West & Bush. I gave him up the notes and soon after I received a letter from Allen, W. & Bush acknowledging the receipt of the notes. I also received a letter from Allen, West & B. after that, or probably before that, that it would be well enough to send them a list of all the parties that was indebted to T. P. Ware that he might have them garnisheed.

He wrote to me also to come to New Orleans & to make or to get Yale & Bolen to make a proposition to T. P. Ware's creditors of twenty-five cents on the dollar in settlement of their claims, which would take some time to get an answer from all of them, and that the talk of Allen, West & Bush and myself being interested together in this attachment or suit would blow over, and that they
317 (Allen, W. & Bush) could buy this stock or stocks in bulk in a way that their losses would not be so much; that even if the stock at Hazlehurst sold for $20,000 that they would be considerably loosers, unless I would prorate with them, which he thought under the circumstances I ought to do.

He and myself made several efforts to have the stock of goods at Hazlehurst sold in bulk before we succeeded.

He said to me in case they got up this agreement that he would take the claim which I held against him in part payment for the stock. This trade was made. I went to New Orleans with Mr. J. M. Allen fully believing that they would turn the stock over to me by paying them $5,000, which I offered to do.

Mr. J. M. Allen said to me that he thought that I would
318 be running a great risk to pay them $5,000; that my creditors would, of course, attach the business. I stated to him that my father was in New Orleans at that time with the $5,000 to pay for it, & would give me his note for the other $10,000, which I could transfer to my creditors and get a settlement of all of my debts. He said that he was afraid of that arrangement, & that he would if I would assist his brother, J. B. Allen, in disposing of the stock; that he would write to all of my creditors making a proposition to them for a settlement, & that it would be a great deal more money to me to settle that way than to turn over this $10,000 note. He afterwards made a proposition of settlement to all of my creditors; they failed, some of them, to accept this offer. He then told me that it was impossible to settle at that time, & that if I needed some money to start in the business he would advance it to
319 me on this note. I afterwards went to him for $5,000; he laughed & remarked that he thought I was doing well enough, & that I would have to wait until after the G. L. Ware matter was settled.

After the G. L. Ware matter was settled, in Dec., 1882, I said to Mr. J. M. Allen that his brother must or ought to do something for

me then. I think he said that he would do whatever he agreed to; that he came there to settle up the G. L. Ware business.

A few days after that I went to New Orleans to see James H. Allen, & he seemed to be very much out of humor, stating that he had already lost money in that transaction & that I ought not to look to him for this $10,000; that he had not collected more than his own claim.

320 I remarked to him that I had noticed a disposition on his part for some time to get around paying this claim, & if he did not pay it that I would sue him. He remarked that he would leave the matter to his attorney & mine, which I did not agree to for some time.

Finally, I told him that to keep the matter out of the courts that I would meet his attorney, Mr. J. M. Allen, with Judge Harris at Jackson. I left him with the understanding that we were to meet soon in Jackson. I waited some two weeks, & not hearing from him I wrote to him to know what they intended doing. He wrote to me that his attorney said that I was not entitled to anything and they would not meet, or something to that effect.

Int. 3. State what kind of a suit was referred to in Exhibit "A" to your bill.

321 Ans. It was an attachment suit against T. P. Ware.

Int. 4. By whom?

Ans. Allen, West & Bush.

Int. 5. State, if you know, who was to give the information to Allen, W. & Bush upon which to base this attachment suit.

Ans. I was to give it.

Int. 6th. Did the giving of such information have anything to do with the execution of Ex. "A?"

Ans. Yes; it did.

Int. 7th. State what you were to do in regard to the attachment suit in aid of Allen, West & Bush.

Ans. I was to assist them in making bond in case they made the bond in Hazlehurst & give him grounds for attachment

322 against T. P. Ware.

Int. 8th. State whether or not this agreement as to what you were to do in aid of Allen, West & Bush's attachment suit was made before the execution of Ex. "A."

Ans. It was made before.

Int. 9th. State whether or not the attachment suit was not the means adopted by Allen, West & Bush rather than the assignment or sale.

Ans. After I made him the proposition of settlement of my claim he said that would be a better way. I mean the attachment.

Int. 10th. State whether or not, upon the execution & delivery to you of Ex. "A," there was any agreement or condition at-

323 tached to it in regard to Jno. M. Allen's approval, & that if he did not approve it Ex. "A" was to be void.

Ans. There was nothing said about Jno. M. Allen or any one else approving the transaction.

Int. 11th. What did Mr. Goldthwaite tell you were his instructions when he came to Hazlehurst?

Ans. He told me that his instructions was to see me, & that if the business was in any danger of attachment to get me to assist him in making a bond & attach for Allen, West & Bush first.

Int. 12th. State who was present at the conference at your house upon Mr. Jno. M. Allen's arrival in Hazlehurst, & what hour did such conference occur.

324 Ans. Mr. Goldthwaite was present. I think it was about 12 o'clock at night.

Int. 13th. State what the object of that conference was.

Ans. I suppose it was to make some arrangements to attach the T. P. Ware business.

Int. 14th. State whether or not, in that conference, Mr. Jno. M. Allen did not rediscuss the assignment sale and attachment methods of action.

Ans. There was a good deal said about it by Mr. Allen.

Int. 15. State whether or not Mr. Jno. M. Allen, in that conference, seemed to be entirely satisfied with Allen, West & Bush's method of attachment.

Ans. He seemed to be satisfied.

Int. 16th. State whether or not Jno. M. Allen, in that con-

325 ference, spoke of consulting Judge Wiley P. Harris in regard to the proposed action.

Ans. I don't think he did. He said he wanted to see Judge Harris if I thought there was no danger — the other creditors attaching before he got back.

Int. 17th. State whether or not you ever agreed with Jno. M. Allen, in Hazlehurst, that you would leave the whole matter to Judge W. P. Harris, and that if Harris said it was unsafe for Allen, W. & Bush to attempt to collect your claim that you would release Allen, W. & Bush from all liability on Ex. "A" to the bill.

Ans. No, sir; I did not have any such agreement.

Int. 18th. State whether or not the suit mentioned in Ex. A to the bill was brought and whether or not Allen, West & Bush were defeated therein.

326 Ans. The suit that was mentioned was brought, & they were not defeated.

Int. 19th. If there was any conversation between you and Mr. Jno. M. Allen in reference to any arrangement for the marshal to effect an entrance into T. P. Ware's store with the writ of attachment detail it.

Ans. My recollection is that Mr. Jno. M. Allen asked me to dispatch or send word to T. P. Ware to Crystal Springs to be on hand that night when he run the attachment; also to have T. P. Ware near by when the marshal could get hold of the key. T. P. Ware arrived at Hazlehurst at 12 o'clock that night and remained on the street until about 4 o'clock, when Mr. Jno. M. Allen & the marshal

327 came in with the attachment, but before I had told T. P. Ware what Jno. M. Allen had said; and I had also told Mr. Allen that he would be about the door or about the bridge,

near the store, with the key. As Mr. Jno. Allen, the marshall, & myself got near the door Mr. Allen asked for T. P. Ware or the key. T. P. Ware came up & handed me the key and said afterwards that the reason he did not give the key to Mr. Allen was that he did not know him.

Int. 20th. Mr. James H. Allen has testified in this case substantially as follows: That on the day his firm gave you the note, Exhibit "A," you said that Ben. Gerson had offered you $5,000 or $10,000 for the Crystal Springs stock, and that Gerson was anxious to buy it, & if the firm of Allen, West & Bush did not take the two $5,000 notes of T. P. Ware you would have to sell to Ben. Gerson. State whether such conversation occurred, & your recollection of it if it did occur.

328 Ans. It did not occur. I had not seen Ben. Gerson up to that time; don't remember seeing him that day. Mr. Allen asked me if I did not think that Ben. Gerson would advance the $10,000 and take the Crystal Springs stock. I told him that I had not seen Ben. Gerson & could not say what he would do. He said something then about me going to see Gerson, but afterwards said that he would rather I would not go; that he was afraid of those Jews; that Gerson would let every Jew in the country that T. P. Ware owed a dollar to know all about it, & before he could do anything they would have both the Crystal Springs business and the Hazlehurst business covered with attachments & he would loose his money.

Int. 21st. Mr. James H. Allen also testified that about a year after the note, "Ex. A," was given you spoke to him about the

329 payment of it, and that he told you that he remembered the note & remembered, also, that no claim was to be made under it unless the lawyers on both sides agreed that the two T. P. Ware notes should be included & collected in the firm's debt against T. P. Ware, and as you had never mentioned the matter to the firm that you knew you had no shadow of claim against the firm in the matter, & that you said the firm ought to pay him something, because but for you they would have lost the whole debt, and that he told you that he would never pay you a cent, & that then you asked him to write to Mr. Jno. M. Allen about it. State your recollection of this conversation.

Ans. *I* as I before stated, when I mentioned this matter to Mr. Jas. H. Allen he seemed to be very much out of humor, & said that if he paid me that he would be that much looser or that he

330 had already lost money, or something to that effect, and it was he that made this proposition to write to Jno. M. Allen. We had talked about my claim at least twenty-five times & he never refused to pay it until that day, but made different kind of promises to me.

Int. 22. State what connection, if any, you had with the merchantile business of T. P. Ware.

Ans. None except that I was employed by him for $125 per month.

Int. 23rd. Say whether or not in any conversation with Mr. Jno. M. Allen you ever abandoned your claim against Allen, West & Bush on the note, "Ex. A."

Ans. No; I never had any such conversation.

Int. 24th. In the deposition of Mr. Goldthwaite, interlined
331 and in a handwriting not that of the commissioner who took it, are these words: "I understood from W. P. Ware that what had been done in New Orleans was incomplete, & was to show a proposition to aid W. P. Ware in the settlement if it could be legally done." Now, state what, if anything, you ever said which could have led Mr. Goldthwaite to so understand.

Ans. I have no recollection of saying anything.

Int. 25th. The commissioner will now exhibit to you the words quoted in the last interrogation, & you will examine them & state whether those words are in the handwriting of the person who prepared the main body of the deposition.

Ans. I don't think they are.

332 Examination-in-chief here closed and witness was cross-examined as follows, to wit:

X Int. 1st. Please state when you came to Mississippi; where you have resided since you came to Miss.; in what business you have been engaged and at what place or places and how long at each place, and, if for any other person than yourself, when, and how long, & who were the persons.

Ans. Came to Miss. in Sept., 1871; have resided at Pine Bluff, Copiah county, until January, 1875; in Jan., 1875, went to Gallatin & remained there until Dec., 1876; went from there to Hazlehurst, where I have remained ever since; was engaged in the merchantile business at Pine Bluff, Gallatin, and Hazlehurst from the 23rd of Sept., 1871, until Jan. 1st, 1875; was in business at Pine Bluff
333 in my own name; I had a partner in 1873 at Pine Bluff, & it was styled Ware & Co.; at Gallatin the business was run in my name, & was run in my name also in Hazlehurst. I remained in business in Hazlehurst up to Jan. 13th, 1879, at which time I failed and have not been in any business for myself since. I have worked on a salary since for T. P. Ware from March, 1879, to Nov., 1881; I worked for J. B. Allen from Dec., 1881, until April, 1882; for Harris, Dodds & Co. from June, 1882, up to present time.

X Int. 2. Who compose the firm of Harris, Dodds & Co.?

Ans. L. B. Harris, G. S. Dodds, and Mrs. C. A. Ware.

X Int. 3. How is Mrs. C. A. Ware related to you?

Ans. She is my wife.

334 X Int. 4. How is T. P. Ware related to you?

Ans. He is my half brother.

X Int. 5. Who purchased the stock of goods you had on hand when you failed in 1879?

Ans. J. P. Matthews.

X Int. 6th. Did not these goods go into the hands of T. P. Ware?

Ans. About half of them did.

X Int. 7. What went with the other half?

Ans. Mr. J. P. Matthews took the other half.

X Int. 8. What did J. P. Matthews do with the other half?

Ans. I am not able to say; I suppose he put them in his stock.

335 X Int. 9. What brought about your failure in 1879?

Ans. I bought goods rather extravagantly in the fall of 1878, during the epidemic, parties from whom I purchased in New York, Chicago, Cincinnati, & Louisville guaranteeing to me that the goods bought of them would not be stopped on account of the quarantine restrictions. In a great many instances I gave my note, payable in 30, 45, and 60 days, for these goods, but did not receive the goods before some of the paper was due & went to protest. I then made some efforts to get an extension on all of my paper that was due, some parties giving me time, others insisting on their money at the time it was due. I then saw that my only way to get out of the difficulty was to convert the goods into money and

336 say to my creditors if you will accept all that I have in full payment of your claims I will turn it over to you.

X Int. 10. Did you convert it into money?

Ans. All except that which was attached.

X Int. 11. How much did you convert into money, & how much was attached?

Ans. I am not able to say how much was converted into money; there was about $5,000 worth of goods attached.

X Int. 12. For how much did you fail at that time?

Ans. Between $20,000 & $30,000.

X Int. 13th. How much money did you have on hand when you failed?

337 Ans. I am not able to say.

X Int. 14. Give it as near as you can.

Ans. There was somewhere between $5,000 & $15,000; am not able to say how much.

X Int. 15. Is that as near as you can come?

Ans. I think it must have been something over $10,000; I am not sure what the amount was.

X Int. 16th. When did T. P. Ware come to Miss.?

Ans. Some time in the fall of 1875.

X Int. 17. What business did he follow from that time until 1879?

338 Ans. He clerked for me from 1875 until Feb., 1877; he then went into the Western produce business & remained in that business until my failure; the style of his firm was W. P. Ware & Co.

X Int. 18th. Were you interested in that business?

Ans. I had no capital in it; this business was joining my business; I managed this business for him for one-half the profits.

X Int. 19th. What was T. P. Ware's age when he came to Miss.?

Ans. He was about 20 or 21; I am not sure.

X Int. 20. What capital did he have when he went into that business?

Ans. I think it was $1,250; perhaps a little more or not quite so much.

339 X Int. 21. Did that business make any profits?

Ans. I think it did.

X Int. 22. What makes you think so, & how much were your part of the profits?

Ans. I did not get anything from the business; my interest in the business was about to be attached. T. P. Ware filed a bill to have a receiver appointed for the benefit of the creditors of W. P. Ware & Co.; the receiver was appointed & the goods sold at auction, where they brought a great deal less than their value; consequently there was no profit to divide between him & myself.

(All preceeding questions and answers objected to by counsel for compl't as wholly irrelevant & immaterial.)

X Int. 23. Who was appointed receiver?

340 Ans. T. P. Ware.

X Int. 24. What did you do with this money you had on hand when you failed?

(Same objection as before.)

Ans. It is impossible to say what I did with all of it.

(Same objection as before.)

X Int. 25. Tell us what you did with what you can say.

Ans. I loaned some of the money to T. P. Ware.

(Same objection as before.)

(It was here agreed between counsel that all objections to questions and answers throughout shall be regarded as observed without being specially noted for competency & relevancy.)

X Int. 26. When & how much did you loan T. P. Ware?

341 Ans. I don't remember the date of the first loan; it was some time during the summer of 1879. I loaned him $2,500. My attorney came to me and told me that Mr. Cooper was going to garnishee T. P. Ware, & that if T. P. Ware owed me anything that I had better collect it, which I did. Some time during the summer of (am not sure whether 1879 or 1880; think it was 1880) Mr. Cooper filed a bill asking to have a receiver appointed of T. P. Ware's business. When this case was to have been tried Mr. Cooper made me a proposition for settlement of all the claims that he held against me, which I accepted, with the understanding or agreement that he was not to take any other claims against me. Soon after that I loaned T. P. Ware some money. I do not remember the am't, as it was not placed on T. P. Ware's books, and at different times

342 up to July or August, 1881, I loaned him some of the money.

X Int. 27. Were any of these loans placed on T. P. Ware's books?

Ans. They were not.

X Int. 28. Did T. P. Ware keep a cash book?

Ans. Not a regular cash book.

X Int. 29. What sort of a cash book did he keep?

X Int. 7. What went with the other half?

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X Int. 27. Were any of these loans placed on T. P. Ware's books?

Ans. They were not.

X Int. 28. Did T. P. Ware keep a cash book?

Ans. Not a regular cash book.

X Int. 29. What sort of a cash book did he keep?

Ans. Part of the time he attempted to keep a cash book. I think then he gave it up entirely, though I am not sure about that.

X Int. 30. Were you not the manager of the business carried on at Hazlehurst in the name of T. P. Ware from 1879 up to Nov., 1881?

343 Ans. I was the manager of T. P. Ware's business during that time, to some extent.

X Int. 31. Just state to what extent.

Ans. I made some of the purchases for the business, made contracts with commission merchants for loans, and assisted him in the management of the business in a great many other ways.

X Int. 32. Did not T. P. Ware live at Crystal Springs and have a store there?

Ans. For about 2½ months before his failure he had a store there and stayed there.

X Int. 33. Is it not a fact that you were the general manager of the business of T. P. Ware, carried on in Hazlehurst from 1879 to the failure in 1881?

344 Ans. Not altogether.

X Int. 34. When Judge Cooper filed the bill to put T. P. Ware's goods in the hands of a receiver, was not that to subject them to the payment of your debt on the grounds that the goods were in reality yours and paid for with your money?

Ans. My understanding was that the receiver was to take charge of my interest if he could find anything that could be identified as mine in T. P. Ware's business.

X Int. 35. If it was your understanding that he was to take charge of anything that could be identified as yours in the T. P. Ware business, how is it you say he filed a bill to take charge of T. P. Ware's goods?

Ans. My understanding was that he was to take charge of it only so far as my interest went.

345 X Int. 36. Do you remember the style of this case in which Judge Cooper filed the bill?

Ans. I can't say that I do, more than Mr. Cooper & Harris & Miller told me that it was not to hinder T. P. Ware in his business, but to try and ascertain if there was anything in the business that belonged to me.

X Int. 37. Give us the date, as near as you can, that you loaned T. P. Ware the first am't after he had paid you back the $2,500 before spoken of, & the times that you loaned any other amounts, as near as you can, and the amounts, and what evidence there was between you and T. P. Ware of any such loans.

Ans. It is impossible for me to remember the dates of any except the last loan, which was made just before he started East,

346 in July or August, 1881. At the time or times that I let him have money he gave me a receipt for it, and at the time that he gave me the two notes that I transferred to Allen, West & Bush we had a general settlement; he took all the receipts I held against him, & the different am'ts for which the receipts called for were in-

cluded in these two notes; can't state the amounts of the different loans.

X Int. 38. You can't tell, then, anything about how long he had been owing you any of the balance of this money?

Ans. It is impossible for me to say now, as there was no records kept of it except the receipts.

X Int. 39. Could you state now whether or not he had been owing you any of that money as much as six months when he gave
347 you the notes?

Ans. He had, and some of it longer than six months. There was some $5,000 of it dated back previous to Sept., 1880; can't give any dates; that — as near as I can come at it.

X Int. 40. What did you do with this money & where was it, from the time of your failure up to the time you let T. P. Ware have it?

Ans. I kept some of it in my house, loaned J. P. Mathews some — it, and Allen, West & Bush some $600 or $700.

X Int. 41. When did you lend Allen, West & Bush any $600 or $700?

Ans. They owed me some $800 at the time of my failure, and during the fall of 1879 Mr. Allen said that he would give me
348 $600 or something over $600—don't remember the amount— in settlement of my claim against his firm.

X Int. 42. Did you accept less than they owed you on your claim against them; if so, why did you do so?

Ans. I accepted some $200 less than they owed me. Mr. Allen stated that he could have bought up claims against me & made a great deal more than that out of it, & that he could still buy claims, & that he would do so unless I gave him something. I asked him to say what he thought was right. He mentioned this amount. I don't remember how much; I think about $200. I told him then to give me the balance that he owed me & he did so.

X Int. 43. Then you let him keep the $200 rather than that
349 some of your creditors should get hold of it?

Ans. I let him keep this amount rather than let him and the creditors get hold of all of it.

X Int. 44. J. P. Mathews, the man to whom you loaned the money, is dead, is he not?

Ans. Yes.

X Int. 45. Did you charge T. P. Ware any interest on the money loaned him?

Ans. I think I did.

X Int. 46. When you figured up & settled on the 21st of August, 1881, how much did he owe you?

Ans. I think about $10,000 & 3 or 4 hundred dollars, or somewhere about that.

350 X Int. 47. What was done about the 3 or 4 hundred dollars?

Ans. He gave the money for it after his failure,

X Int. 48. When you settled on the 21st of August, why did you not take his note for the full am't he owed you?

Ans. There was a settlement which appeared on his books between us, and we agreed to leave this 3 or 4 hundred dollars over until after we could figure up this settlement.

X Int. 49. Was this $10,000 & 3 or 4 hundred dollars altogether outside of anything that appeared on the books, or did some of that appear on the books?

Ans. It was all outside of that that appeared on the books.

351 X Int. 50. What was the settlement on the books between you & him about, & what transactions did the book's evidence between you and him?

Ans. Goods that I had bought from the firm & salary that he was to pay me.

X Int. 51. Then the books evidenced all the transactions between you and him, except the loaned money, did it?

Ans. I think it did.

X Int. 52. What showing did T. P. Ware give you for the 3 or 4 hundred dollars, over & above the $10,000 borrowed money, when you settled on Aug. 21st, 1881?

Ans. No showing at all, except that I pencilled the amount down in my memorandum book.

352 X Int. 53. Where is your memorandum book?

Ans. I am not able to say; it may be at home & it may not be. I sometimes use two or three memorandum books a year, & when I find there is nothing of importance in them I destroy them.

X Int. 54. When and how did T. P. Ware pay you this 3 or 4 hundred dollars?

Ans. He paid me in money; don't remember the date.

X Int. 55. Who kept the books of T. P. Ware in the Hazlehurst house from summer of 1880 to time of the failure?

Ans. I think in the summer of 1880 & winter Mr. Charlie Gilmer kept the books. I am not sure. After that time Mr. Hart &

353 Cook kept the books a portion of the time. T. P. Ware kept them a portion of the time, and the time of the failure Mr. Hartwell Cook & C. D. Rymes were both employed as book-keepers.

X Int. 56. You say there was no cash book kept?

Ans. I think a portion of the time there was, but not a regular cash book.

X Int. 57. What sort of a cash book was it? Just tell what it was kept for and what it — intended to show.

Ans. Mr. Charlie Gilmer, after he was employed by my brother as book-keeper, was in the habit of getting drunk & leaving the business for a week or ten days at a time. During his absence there was merely a memorandum kept of the cash, & he claimed

354 at some time that the cash book was so confused that he was not able to make it balance. After that time there was very little attention paid to the cash book by Mr. Gilmer or my brother. It showed but very few transactions, & maybe a week at a time there was no entry at all made on it. Mr. Hartwell Cook was employed by my brother as salesman and book-keeper. He said that it was impossible for him to keep a cash book unless we would do away

with the old cash book & would take stock, wipe out all previous transactions or entries, & open a new cash book, which was not done. I think some five or six weeks or, perhaps, not so long before my brother's failure, Mr. Rymes went in as assistant book-keeper. After that time, I think, they kept the cash straight, though I am not sure.

355 X Int. 58. Can you explain now, Mr. Ware, how it was that you let your brother have $10,000 in cash & there was a pretended cash book kept and not a single entry as to this $10,000 ever went on the cash book?

Ans. Yes, sir. There was considerable judgments against me, and as he had no regular book-keeper my brother and myself agreed not to put this amount on any book, and not to let any one know anything about it for fear that he might be garnisheed.

X Int. 59. How could the cash book be expected to balance when there was $10,000 of cash put in and no entry at all made of it?

Ans. It could not have been and was not expected; that
356 was one reason there was no regular cash book kept.

X Int. 60. When did you let your brother have the $2,500 that you say he paid back to you before he was garnisheed under Judge Cooper's judgment?

Ans. I am not able to say; I don't remember the date of the garnishment.

X Int. 61. Did you not let him have that money when he purchased the goods on which he first commenced the business of T. P. Ware?

Ans. I did not; it was some time after that.

X Int. 62. Where did he get the money with which to purchase the goods with which he commenced this business?

Ans. He got some $1,250 or thereabout out of his business
357 that was sold by the receiver some few months previous to his starting in the business; he had some other money; I am not able now to say where he got it.

X Int. 63. Were you ever burned out in business?

Ans. I was.

X Int. 64. What point & where?

Ans. At Pine Bluffs; in fall of 1874.

X Int. 65. Were you insured at that time; if so, how much?

Ans. I was insured, I think, for $2,000.

X Int. 66. After your failure in 1879 did not T. P. Ware open up business in the same house where you had been doing business, with the same stock, & did you not manage that business?

358 Ans. He did not open in the same house; he opened with a new stock, & not a dollar's worth of the goods went into that house until after it was sold at sheriff's sale. My brother then purchased half of the stock from Mr. J. P. Mathews & some of the other attaching creditors or their attorneys.

X Int. 67. Did you go into the same house then?

Ans. No, sir; he never did business in that house.

X Int. 68. With what size stock did he open after your failure & before he bought at sheriff's sale?

Ans. I am not able to say; it was about $2,000; may be more or less.

X Int. 69. Where did he get this $2,000?

359 Ans. I have above stated all that I know about the money he started into business with.

X Int. 70. Do you know where he got the money with which he purchased the interest in your old stock?

Ans. My recollection is that he purchased that on credit—a portion of it—giving R. W. Millsaps & J. P. Mathews as surety on his note.

X Int. 71. From whom did he purchase on a credit?

Ans. J. P. Mathews held the first judgment against the stock for about $3,100; Messrs. Harris & Miller represented some $2,000; that were the next oldest judgments against the stock; Mr. J. P. Mathews bid this stock off at sh'ff's sale for $5,000. He then agreed with me that if I would pay his portion of the costs in this

360 suit against me that he would take one-half of the goods in full payment of his claim. My brother believing that the other half of the stock was worth more than the $2,000, he agreed to pay this $2,000 to the other creditors for satisfaction of their judgments, which he did by getting time and giving the above-mentioned gentlemen as sureties on his note; I am not sure, but I think this is the way that matter was settled.

X Int. 72. Is it not a fact that you made the trade with Messrs. Miller & Harris for the $2,000 judgments against you?

Ans. I am not sure that I did; I may have assisted my brother in making the trade.

X Int. 73. Did not Mr. J. P. Mathews purchase the judgment he held against you?

361 Ans. No, sir; he did not. I borrowed money from Mr. J. P. Mathews.

X Int. 74. Were you not the general manager of T. P. Ware, at Hazlehurst, from the time he went into business there until his failure?

Ans. To some extent I was. I would not have loaned any man as much money as I had loaned him without knowing something about the way the business was conducted.

X Int. 75. When did you lend J. P. Mathews the money you say you loaned him, & how much did you loan him?

Ans. I loaned it to him some time after the division of my stock of goods. He came to my house one night after supper & asked me for $500. I loaned it to him & took his due bill for it. When he paid it I gave him up his due bill. I do not remember the date. I kept no record of it.

362 X Int. 76. Your object in attempting to get money from Allen, West & Bush in Sept., 1880, was to pay yourself back what your brother owed you, was it not?

Ans. To pay back $5,000 of it. I do not remember the am't my brother owed me at that time.

X Int. 77. How did you use the $3,000 you got from them?

Ans. I think that my brother used it in his business by drawing on Allen, W. & Bush for amounts as he needed it; that's my recollection.

X Int. 78. Then, when you could not get the money to pay back what your brother owed you, you continued to lend him other sums, did you?

Ans. I knew or believed that the only way to collect the
363 amount that I had loaned him up to that time would be to give him other assistance until he could establish a credit sufficient to borrow money to pay me.

X Int. 79. *When*, after T. P. Ware's failure, did you not commence a business in Hazlehurst under the name of W. J. Ware, your father?

Ans. Some time before Allen, West & Bush bought the stock of goods of T. P. Ware that was then under attachment I had a talk with Mr. James H. Allen. He told me that if they could buy the stock of goods in bulk that they would sell the stock to any one that would pay them $15,000, taking the note which I held against him in part payment. I told him that I had but a few hundred dollars, but would write to my father that if he could raise $5,000 or near that am't to meet me in New Orleans & to dispatch
364 me what time he would be there. He met me there & said that he could raise somewhere about that am't of money. I went to Allen, West & Bush & told them of his arrival. They seemed to think that we would have no trouble in getting up an agreement to have the goods sold in bulk, and, feeling satisfied that this arrangement could be carried out, I ordered, through Allen, West & Bush, a car-load of flour to be shipped to W. J. Ware, Hazlehurst. After the trade was made Allen, West & Bush refused to sell this stock on the terms above mentioned, stating that it would be dangerous for my father to start into business & that they would take the car-load of flour off his hands at what he had give for it, which they did, & put — into the T. P. Ware stock of goods after they purchased it.

365 X Int. 80. Look at the power of attorney accompanying the deposition of James H. Allen I now hand you from W. J. Ware to yourself & state whether or not that power of attorney was given in pursuance of an arrangement for you to open a business in Hazlehurst in the name of W. J. Ware.

Ans. I think it was.

X Int. 81. State when it was that J. H. Allen proposed to you that if W. J. Ware would pay $5,000 & you would give up your notes here sued on that they would turn over the T. P. Ware stock to you.

Ans. I do not remember the date; we talked about it several times, or more than once.

X Int. 82. Are you positive that he ever made that proposition to you, & that $5,000 was the am't to be paid?

366 Ans. I am not positive that he mentioned $5,000, but from the different conversations I had with him he always led me to believe that was the amount, but several times said that I must or ought to prorate with him.

X Int. 83. What makes you now remember that in the conversations you had with Mr. Allen that he always led you to believe that $5,000 was all that you would have to pay?

Ans. He talked about buying the stock for $15,000 and spoke of settling my claim, but sometime- would say that I ought to prorate with him; but from the way that he spoke I was satisfied that he believed that I would insist on the full am't of my note.

X Int. 84. State, if you know, in whose handwrite- a mem-
367 orandum at the bottom of "Ex. to Int. 43" in James H. Allen's deposition is, & if not in your own.

Ans. It is not my own; I don't know whose it is. I have never had the credit of writing that well; it is not in my writing; don't remember dictating it or ever seeing it before. I may have possibly have told some one to write something to that effect, but don't remember ever dictating that.

X Int. 85. Did you not furnish this paper, Ex. to X Int. 43 of James H. Allen, to Messrs. Calhoon & Green, that paper just as it now is, when they were preparing cross-interrogatories for J. H. Allen?

Ans. I think I know who wrote this. I think it was written by Mr. Burddett, the book-keeper for Harris, Dodd & Co., and I
368 remember that I left a memorandum asking him to fill it out, something about the W. J. Ware matter, but am not able to say that this is the exact wording of the memorandum I left with him or not. I think I sent them that paper.

X Int. 86. Who is the manager of the business of Harris, Dodd & Co., of which Mr. Burdette is the book-keeper?

Ans. I am the principal manager; can't say that I have the exclusive management of the business.

X Int. 87. Will you please now explain why Mr. Burdette would write this memorandum, purporting to have been written by you, without your direction, & why you would then send the paper with that memorandum on it in your name, unless you had intended it as your act?

Ans. I would say that I write very badly, & my recollec-
369 tion is that I wrote something & gave it to Mr. Burdette to copy. I am not sure, but I think Mr. Burdette mailed & directed the paper to Messrs. Calhoon & Green.

X Int. 88. How is it, Mr. Ware, that if you understood in your conversation with Mr. Allen that your father was to pay $5,000, when you said in this memorandum that it was $8,000 that your father was to pay in addition to your note?

Ans. I think very likely Mr. Burdette made the mistake; I am not sure; and Mr. Allen might have said something to me about $8,000. There was so much said that I can't remember all that was said.

X Int. 89. In the memorandum you gave Mr. Burdette to copy did you intend to represent the matter as you then understood it?

370 Ans. I did.

X Int. 90. Did you not know it was a fact that Allen, West & Bush did attach for $18,000.

Ans. I know that Mr. J. M. Allen told me the night before he attached the stock that he was going to attach for $18,000; am not able to say whether it was attached for that am't or not.

X Int. 91. The paper that you say was in the hands of Judge Mays—what became of that paper?

Ans. I think Judge Mays holds it at this time; he told me a few days ago that he did.

X Int. 92. Did you state in your original examination, provided that Allen, W. & Bush should be first paid, and then that your indebtedness should be paid if T. P. Ware got into any trouble
371 & had to turn over his stock?

Ans. I did not make any such statement.

X Int. 93. When Allen, W. & B. insisted on the agreement that was left with Judge Mays was there anything said of the indebtedness of T. P. Ware to you, and what was to be done about, or how it was to be paid or arranged?

Ans. There was nothing said about it or it was not mentioned in the agreement in writing; but Mr. Allen said to me, in the event that his agent, Judge Mays, took possession of the stock, &c., that he would manage to get my claim out of it, or something to that effect.

X Int. 94. Was there anything said at that time about in-
372 cluding your claim in this debt of Allen, W. & Bush?

Ans. Nothing more than I have stated above.

X Int. 95. Who effected the arrangement with the U. S. marshall and the creditors of T. P. Ware for the purchase of the stock of goods?

Ans. I think that Mr. J. M. Allen & others; I don't know who—I think Mr. J. M. Allen—were acting for Allen, W. & Bush.

X Int. 96. After that arrangement was consum-ated did not yourself & J. M. Allen go to New Orleans together?

Ans. We did.

X Int. 97. Did you not have, with J. M. Allen, various conversations, both before leaving Hazlehurst & on the road to New Orleans and after arriving at New Orleans, in reference to this stock
373 that belonged to T. P. Ware and about your desire to purchase it, and suggest various ways & prices, & did you ever estimate to him in either one of these conversations that Allen, W. & B. owed you a dollar?

Ans. I have no recollection of any conversation with Mr. J. M. Allen before arriving at New Orleans. My recollection is that all that passed or was said between us was said in the door of the office of Allen, W. & B., when I stated to Mr. J. M. Allen that I could or I might get $6 or $7,000 in cash, & that I had rather do that & wind up the whole business. My recollection is that he made no reply. Not to Mr. J. M. Allen did I intimate that Allen, W. & B. owed me anything.

X Int. 98. Was not J. M. Allen present at the interviews
374 you had with J. H. Allen during that visit to New Orleans, and did not J. M. Allen suggest & draw up a contract made between you & Allen, W. & B. while at New Orleans at that time, by which they employed you to help dispose of the stock, and did you in any of these conversations with J. H. Allen, in the presence

of J. M. Allen, make any claim against Allen, W. & B. for any amount claimed to be due you from them?

Ans. My recollection is that the train arrived in New Orleans early in the morning, & that Mr. J. M. Allen said that he was going to the residence of James H. Allen about half past 9 or 10. Mr. J. M. Allen and James H. Allen met me at the cotton exchange. Mr. James H. Allen said that he wanted to remain at the cotton exchange for awhile, and that he would go back in the rear or
375 get to some place where he would not be interrupted in our conversation. We went back, no one being present but he & myself, where he stated to me that Mr. J. M. Allen said to him that morning that R. N. Miller, of Hazlehurst, said that he intended to attach every business that was opened in the name of Ware until his clients were paid. I insisted on his carrying out his agreement, which he refused to do. He then made an agreement with me to meet in his office some time later in the day. When we met he then said that he had a proposition to make me; that was to assist J. B. Allen in disposing of the stock of goods, and that they would pay me $125 per month, and that he wanted the stock disposed of as rapidly as possible, & that if I would assist him that he would give me all over $15,000 that could be made out of the stock by me refunding the $125 per month, which I accepted.

376 X Int. 99. From the time that the attachment was sued out up to the time that J. M. Allen settled the matter between Allen, W. & B. & G. L. Ware, on the 4th of Dec., 1882, did J. M. Allen not have control of the claim of Allen, W. & B. against T. P. Ware; did not you and him have frequent conferences about the same & about the G. L. Ware matter; did you ever in any of these conversations with J. M. Allen up to the night of the 4th of Dec., 1882, intimate to him that Allen, W. & B. owed you anything on account of this $10,000 obligation?

Ans. I think he did. We did; don't think I did after the attachment was sued out, though I am not sure.

X Int. 100. On the night of the 4th of Dec., 1882, at Hazlehurst, did you not say to J. M. Allen that you thought Allen, W. &
377 B. ought to pay you something; that you had assisted them in getting their money; that they would not have got it but for your assistance; that Mr. Jim Allen had said to you that if he could not collect what was due you he had rather give you something of what he did collect, & did you then make any claim to said J. M. Allen of any liability growing out of the $10,000 obligation?

Ans. My recollection is that I said to Mr. J. M. Allen that Allen, W. & B. ought to pay me; that they had wound up the T. P. Ware matter; that was about all that I remember saying. I have no recollection of saying that to Mr. Allen. I made nothing more than I have above stated.

X Int. 101. Up to the 4th of Dec., 1882, had you ever
378 written a line to Allen, W. & B. or had a line from them in reference to this $10,000 that you now claim they owed you or had you ever mentioned it to any of them or they to you, except as stated by you heretofore in your conversation with J. H. Allen, &

was anybody besides yourself ever present when it was mentioned between you & J. H. Allen?

Ans. I do not remember of writing or ever receiving any letters — them about this matter. I mentioned it only, as I stated before, to James H. Allen; there was no one present besides myself. It was a matter that I tried to keep secret as much as possible, and I was satisfied that Mr. James H. Allen wanted it kept secret.

X Int. 102. Why did you want it kept secret?

379 Ans. I did not want Mr. Allen garnisheed by any creditors.

X Int. 103. Was not Mr. Allen garnisheed by some of your creditors?

Ans. I think he was.

X Int. 104. Did you not write to him when so garnisheed to answer they had none of your effects?

(Complainant's counsel here advised the witness to decline to answer unless the letter is produced.)

Here the letter referred to was produced.

Ans. Yes, sir; I wrote this letter, marked Exhibit F to J. H. Allen's deposition, dated Dec. 20th, 1881. This garnishment, I understood, referred to a future transaction and some other

380 matters that might have been mentioned in the letter, but I did not think that Mr. James H. Allen felt that he was indebted to me one dollar if he was defeated in the suit mentioned in the obligation that he gave me; and as he or they had not obtained judgment on their attachment I thought that that would be the proper answer.

X Int. 105. Was not this Mr. Ware, after you say Mr. Allen had agreed with your father, to purchase the T. P. Ware stock & to settle your $10,000 note?

Ans. If the letter is dated Dec. 20, 1881, that was after we had the conversation.

X Int. 106. Now, explain how you reconcile your two statements, the one that Mr. Allen had, previous to this time, proposed to pay your notes or accepts them in part payment for T. P. Ware's

381 stock; how it was that you did not consider that he considered he owed you anything at that time.

Ans. This note or obligation explains itself, & I think under the circumstances that Mr. Allen could have answered that he was indebted to me or that he was not.

X Int. 107. Then your idea is that the proper answer was that he either owed you or that he did not owe you; that either one would have been proper.

Ans. I think that would have been proper, as the suit mentioned in the note or obligation was pending at that time.

X Int. 108. The suit that is referred to in that note or obligation of yours—what was that suit to be for?

Ans. The firm of Allen, W. & B. was to attach the business

382 of T. P. Ware, & if not defeated in this suit they were to pay this $10,000.

X Int. 109. For what were they to attach T. P. Ware?

Ans. That matter was left entirely with Allen, W. & B.

X Int. 110. Then Allen, W. & B. were to be permitted to attach for any amount they saw proper, were they?

Ans. They were to have judgment for what they attached for, or this note was to be void.

X Int. 111. Was that the contract between you and Allen, W. & B., that they were to have judgment for whatever they attached for or the note was to be void?

Ans. The note itself was the agreement.

X Int. 112. Answer the question.

383 Ans. I don't know of any other way to answer it.

X Int. 113. Now, I want you to state what the suit referred to in this obligation means, and what was your contract with Allen, W. & B. about what that suit was to be, and whether or not it was understood at the time in the conversation between you, Allen, W. & B. that, in order to make the note good, they were to have judgment against T. P. Ware for whatever am't they attached him for.

Ans. As I before stated, during the day that they gave me this obligation or note Mr. Allen made me several propositions. He stated that he had learned through Mr. Cobb, who was a subscriber to Dun's agency, that T. P. Ware might or would dispose of his stock at any price to satisfy my claim, & that he wanted to
384 fall on some plan to take up my claim against T. P. Ware & get me to assist him in collecting his. Late in the day I made him a proposition, as before stated, that if he would give me his note, payable in 90 days, that I would give him grounds for attachment against T. P. Ware, and that I would render him any assistance that I could in collecting his claim. He said then that T. P. Ware might defeat his attachment. It was then agreed between him & myself that if T. P. Ware defeated the attachment this note was to be void. It was understood between Allen and myself that if they were defeated in attaching T. P. Ware this note was to be void. Of course, this was a matter that I could not control, as it was T. P. Ware's goods that they were to attach, & all that I could do was to give him what I thought was sufficient
385 grounds for attachment. That's the best answer I can give.

X Int. 114. State whether or not it was contemplated, when this obligation on which you have brought suit was given, that your debt of $10,000 from T. P. Ware to you should be included with the debt of Allen, W. & B., & they should attach for the whole amount of their debt, including yours.

Ans. I think they certainly intended to include it.

X Int. 115. State what the giving of information on which to found an attachment against T. P. Ware had to do with the obligation upon which you sue.

Ans. I think that Mr. James H. Allen rode with me, the evening after he gave me this obligation, to the Jackson depot in a carriage, and asked me some questions about a cause for attachment.
386 He wanted to know, as his attorneys might have to attend to this matter hurriedly, or something to that effect. I asked Mr. Allen if he did not think that my claim against T. P. Ware —, as

it had never been rendered in any statement by him, as a part of his liabilities. He seemed to think that was sufficient grounds.

Mr. James H. Allen can answer that question better than I can. I don't see how I could answer it.

X Int. 116. In your direct examination, interrogatory 6, are these words: "Did the giving of such information have anything to do with the execution of Ex. A?" Your answer is: "Yes; it did." Now, state what it had to do with the execution of Ex. A.

Ans. Mr. Allen said to me that he knew of no grounds by which he could attach T. P. Ware, but if I would give the information that he would give me this obligation.

387 X Int. 117. Now, what information did you give him?

Ans. I gave him the information above mentioned.

X Int. 118. What information is it above mentioned?

Ans. That when T. P. Ware was making a statement of his liabilities this amount he owed me was not included.

X Int. 119. Is that the only information you gave him?

Ans. He said to me that if his attorneys wanted other information & had time to see me he would let me know, or something to that effect, and they never asked me for any other information.

X Int. 120. How did you know that Mr. T. P. Ware had given a statement of his liabilities and said nothing about his indebtedness to you?

388 Ans. I saw a statement, but do not remember who he gave it to, when this amount was not included.

X Int. 121. Where did you see such statement and under what circumstances?

Ans. I do not remember where I saw it, but some one—I do not remember who—showed it to me.

X Int. 122. Did you tell the party who showed it to you that he was indebted to you?

Ans. I think I did.

X Int. 123. Is it not a fact that you told Mr. Allen that there was then no grounds for attachment that you know of, but that you would have T. P. Ware to give the ground of attachment, & that if necessary you would have him abscond or leave the

389 State?

Ans. I don't think I told Mr. Allen anything of the kind, but told him what I have above stated.

X Int. 124. Did you not tell Mr. Goldthwaite and Mr. J. M. Allen, in your house, on the night that Mr. Goldthwaite & Mr. Allen met you there, that nobody had any ground for attachment then, but that you would have T. P. Ware to give whatever ground of attachment we desired, &, if we thought best, you would have him to leave the State?

Ans. I have no recollection of telling Mr. Allen & Mr. Goldthwaite anything about grounds for an attachment, but my recollection is *is* that one or the other of them said something about T. P. Ware leaving the State. I do not remember what it was.

390 X Int. 125. In the interview between you, Mr. Goldthwaite, and J. M. Allen at your house on the night above referred to

did not Mr. Allen and Mr. Goldthwaite both insist that Allen, W. & Bush could not afford to undertake the collection of your claim against T. P. Ware, and did you not say that Judge W. P. Harris and Judge Mays both thought it could be safely done, and did you not insist that Mr. J. M. Allen should go to Jackson & consult with Judge Harris about it?

Ans. Both Mr. Allen & Mr. Goldthwaite said that they thought it would be a dangerous arrangement, or something to that effect. Mr. Goldthwaite mentioned different ways by which this amount could appear on Allen, W. & Bush's books. One was that a portion of T. P. Ware's cotton then in the hands of Allen, W. & B. — turned over to some other house, or something of that kind, and that my claim ought to be paid in some way; that it would not ap-
391 pear on Allen, West & Bushe's books. Mr. Allen then said that he wanted to go to Jackson & see Judge Harris & have a talk with him. I think I told him that my money was what I was the most interested in.

X Int. 126. When Mr. Allen returned from Jackson what did he tell you Judge Harris said about any attempt to collect your claim?

Ans. He told me that Judge Harris said that, if this $10,000 went on the books of Allen, W. & B. and the other creditors contested his claim, *that* they might loose the whole thing, & that he had better attach for something less than the whole amount, &, I think, said that a half a loaf was better than no loaf at all. He then asked me about the amount of A., W. & B.'s claim against T. P. Ware; if I thought it was as much as $15,000. I told him I did not
392 think it was, though it might be. He said, then, that he would attach for $18,000, & if he got in the first attachment he was satisfied they could work it out all right, or something of the kind.

X Int. 127. When & where did this conversation between you and J. M. Allen take place?

Ans. I am not sure where, but think it was in the store of T. P. Ware; I am not positive. It was after he returned from Jackson; don't remember exactly when.

X Int. 128. During the time that you were working on a salary for J. B. Allen did you not, at the expiration of each month, have your salary credited on the books to Mrs. C. A. Ware, your wife?

Ans. I am not sure, but I think Mr. J. B. Allen said that he knew that he would be garnisheed, & that he did not want to get
393 mixed up in that matter, & that he would instruct the book-keeper to make that kind of an entry, which I consented to.

X Int. 129. When Allen, W. & Bush, through J. B. Allen, sold out the remnant of the T. P. Ware stock to G. L. Ware was not the amount to the credit of Mrs. C. A. Ware on the books of J. B. Allen taken as part payment from G. L. Ware to Allen, W. & Bush for the stock so purchased by G. L. Ware; did you not assist in negotiating the trade for G. L. Ware with J. B. Allen?

Ans. I do not remember how that was; I did.

X Int. 130. How was it, when you were trying to devise some way by which G. L. Ware could secure Allen, West & Bush in the pur-

chase of this stock, if you were willing that he could use the
394 amount due you that had been placed to the credit of your wife, that you never intimated to J. B. Allen anything about the balance of the indebtedness of Allen, West & Bush to you, as shown by Exhibit A to your bill, if you consider that an existing indebtedness at that time?

Ans. I do not remember how it was, more than G. L. Ware was to pay me the same salary that Allen, West & Bush was paying me, and that Allen, West & Bush was at that time or had been negotiating with my creditors for a settlement, & I did not care for my matter to get mixed up with G. L. Ware.

X Int. 131. Was Allen, West & Bush at that time or had they been for 8 or 10 months previous to that time carrying on any negotiations with your creditors?

Ans. I do not say that they were carrying on any at that
395 time, but they had been within the last three months, and that we were waiting for the result.

X Int. 132. State any creditors of yours that they had been negotiating with within three months previous to that time.

Ans. I do not remember the names, but I do know that they commenced negotiating with these creditors soon after Allen, West & Bush bought the stock of T. P. Ware from the marshal, and it lasted some time; this sale from J. B. Allen to G. L. Ware, I think, was made about April 1st, and these negotiations were between that time and the 19th of December.

X Int. 133. When you were in New Orleans, on Dec. 7th, 1881, when the contract that was drawn by J. M. Allen and signed by you and Allen, W. & Brush, if Mr. J. H. Allen then recognized, as you say he did, an indebtedness of $10,000 from Allen, W. &
396 Bush to you, how was it that in making an agreement with them at that time as to the conditions upon which you could have the T. P. Ware stock of goods that it was agreed that you could have the remainder after paying Allen, W. & B. the full amount of their claim against T. P. Ware & the claim of Hill, Fletcher & Co. against T. P. Ware, & the costs & expenses, & nothing at all was said about any indebtedness from them to you?

Ans. Mr. James H. Allen & myself had two conversations before this agreement was drawn up where he stated it was dangerous to go into the arrangement of turning the stock over to W. J. Ware, & that Mr. J. M. Allen had told him that he would be glad to sell the stock for $14,000. I stated to him that if the stock was replenished that —
397 the course of some time, I do not remember how long, that there could be considerable more than $15,000 made out of it. He then said that he wanted my assistance, and if I would work for him he would give me $125 per month, and in the event that this $15,000 was paid, with the cost of carrying on the business, that he would then give the stock up to me if I would refund the $125 per month which he was to pay me.

X Int. 134. The question I ask you is not what was said between Mr. Allen & you, but why it was, when you were entering into the particulars of a written agreement as to the terms and conditions

upon which you could have the T. P. Ware stock, if Mr. Allen then recognized an existing indebtedness from Allen, W. & B. to you, or you claimed such an indebtedness, that there was nothing said about it in the written agreement made between you & Allen, West & Bush on the 7th of Dec., 1881?

398 Ans. We had settled that matter and talked about it fully in our previous conversation. I considered this a separate arrangement from the other. It was neither mentioned by Mr. J. H. Allen or myself at the time Mr. J. M. Allen was drawing up this agreement.

X Int. 135. Where is T. P. Ware now, & what is he doing?

Ans. He is clerking in Hazlehurst, for Harris, Dodds & Co.

X Int. 136. Where is G. L. Ware now, & what is he doing?

Ans. He is clerking for the same firm.

X Int. 137. Who purchased the remnant of the stock that G. L. Ware bought from Allen, West & Bush?

Ans. I think that L. B. Harris, of the firm of Harris, Dodds & Co., bought it.

399 X Int. 138. In what house is Harris, Dodds & Co. doing business?

Ans. In the T. P. Ware house, known as the New York house; also in a portion of the Hurlburt house, adjoining.

X Int. 139. When G. L. Ware was attached, or the goods attached claimed by G. L. Ware, who employed counsel for G. L. Ware, & who was to pay them?

Ans. I employed for G. L. Ware; G. L. Ware was to pay them.

X Int. 140. What is G. L. Ware's financial condition now?

Ans. I am not able to say exactly.

X Int. 141. Do you know of any money or property he has?

Ans. I do not; the firm of Harris, Dodds & Co. owes G. L.

400 Ware $15,000.

X Int. 142. How long have they owed him $15,000?

Ans. I think since about the middle of last June.

X Int. 143. For what?

Ans. Borrowed money.

X Int. 144. When did G. L. Ware come to Miss.?

Ans. In Oct., 1881.

X Int. 145. What is his age?

Ans. He was between 20 & 21.

X Int. 146. Do you know what time he became 21?

Ans. Some time during the next winter of 1881 & 1882; I think in February, 1882.

401 X Int. 147. You stated that it was a part of the agreement of Allen, W. & B. and yourself when the obligation here sued on was given that it was agreed that you should furnish the information upon which attachments should be sued out against T. P. Ware that you should have the bonds made for those attachments; did you furnish any grounds for suing out an attachment or have anything to do with making a bond?

Ans. I furnished the grounds that I have mentioned in regard to T. P. Ware's statement to some of his creditors. Mr. James H. Allen

said he thought that was sufficient; that he would see his attorneys & if they needed any other information they would call on me, which they never did. Mr. Goldthwaite called on me to assist him or to know if I could make the bond. I stated to him that I
402 had spoken to Mr. J. P. Mathews, who stated that he would make the bond. I think I said to Mr. J. M. Allen on his arrival that I could make the bond. My recollection is Mr. J. M. Allen told me that he preferred making the bond in Jackson & to attach the business with the marshall.

X Int. 148. You say when you had the conference with Allen in Sept., 1880, that they advanced T. P. Ware at your request $3,000, with the understanding that if T. P. Ware should get into trouble at any time in the future that you would not take advantage of them collecting your claim against T. P. Ware; now, how was it, in view of this understanding, that you say you told Mr. Allen that unless he paid you $10,000 for the two notes you held against T. P. Ware that you would return home and have T. P. Ware make a general assignment?

403 Ans. I considered that I had carried out my part of the agreement, & in view of his taking or trying to take possession of T. P. Ware's effects under an agreement between Allen, W. & B. & T. P. Ware, then in the hands of Judge Mays, that it was left entirely with Allen, W. & B. whether they would carry out their verbal agreement with me in taking possession of the goods under the agreement above mentioned. Their verbal agreement was to pay me whatever T. P. — owed me, & *that* I insisted that this should be put in some sort of shape that I could hold Allen, W., & B. responsible for it.

X Int. 149. When did they make the verbal agreement to pay you whatever T. P. Ware owed you?

Ans. About the time T. P. Ware gave them this written agreement left with Judge Mays. Some time previous to the sign-
404 ing of this agreement by T. P. Ware I was in New Orleans, when Allen, of Allen, W. & Bush, made this agreement with me to include or rather pay my claim in case he took possession under an agreement which he wanted me to sign as T. P. Ware's agent. I signed T. P. Ware's name as his agent, and this agreement was either sent to Judge Mays through the mail or I delivered it to him, I am not sure which. Soon after that Mr. James H. Allen came to Hazlehurst and said to me that he preferred T. P. Ware's signing this in his own writing, as it might not be legal for me to sign it, or something of the kind. He said to me that he would give up or destroy this first agreement, and that he wanted T. P. Ware to sign or he had signed a similar one.

X Int. 150. Do I understand that in this agreement that
405 was written out when you were in N. O., that you signed as T. P. Ware's ag't, that it was included in that that Allen, W. & Bush should include whatever T. P. Ware owed you, or was it at that time that they simply made you a verbal promise to that effect?

Ans. It was at that time they made me a verbal promise.

X Int. 151. Did you tell them how much T. P. Ware owed you then?

Ans. I don't think I did.

X Int. 152. They just promised, then, to pay you whatever T. P. Ware owed you without knowing anything about what that amount was?

Ans. Mr. Allen said that in case he took possession of the goods under this agreement that he would pay me or protect my
406 interest with his, or something to that effect; that this agreement was not to take any advantage of me, but to protect him against other creditors.

X Int. 153. When you signed that agreement did you sign it as agent or did you just sign T. P. Ware's name to it?

Ans. I think I signed T. P. Ware's name. He asked me if I had a power of attorney to sign for T. P. Ware, & I told him that I had. I had signed a good many checks, notes, &c.

X Int. 154. I now read to you "Ex. H" to the deposition of James H. Allen and ask you if that's a copy of the instrument to which you signed the name of T. P. Ware?

Ans. I think the document I signed was similar to that.

407 X Int. 155. Did you not go to New Orleans and fix up that document & sign T. P. Ware's name to it to get indulgence from Allen, W. & B. for the T. P. Ware business?

Ans. I did not. I never heard of the document until after I had worked with Allen, W. & B.'s book-keeper one whole day trying to straighten up the account between T. P. Ware & Allen, W. & B. There was a considerable difference in the two accounts, which we were not able to straighten up to my satisfaction, but it was then that Mr. Allen insisted that his claim should be protected in that way, and that he would correct any error in T. P. Ware's account if T. P. Ware could show him to what amount his claim was wrong, but insisted on me signing this document as T. P. Ware's agent.

X Int. 156. Did I understand you to say you told him, J.
408 H. Allen, that you had power of attorney from T. P. Ware to sign it?

Ans. I said I had power of attorney from T. P. Ware to sign all notes, drafts, & other instruments pertaining to his business.

X Int. 157. What became of that power of attorney?

Ans. I am not able to say; I carried it in my pocket for some time after T. P. Ware's failure.

X Int. 158. When was it executed?

Ans. About the time T. P. Ware started into business.

X Int. 159. What time did T. P. Ware commence business at Crystal Springs?

Ans. In September, 1881.

409 X Int. 160. When & where did you say to J. M. Allen "that if Allen, W. & B. were not going to carry out their agreement to give up your notes & you would take care of yourself?"

Ans. That was in the store, in Hazlehurst, of T. P. Ware the night that the attachment was run by Allen, W. & B.

X Int. 161. You say you told J. M. Allen that you did not like the way things were going on that night when you made this proposition to him about giving up the notes. To what do you refer when you say you did not like the way things were going on that night, & what was the cause of this statement of J. M. Allen?

Ans. I did not think that J. M. Allen was discharging his duty, as he was delaying this attachment.

410 X Int. 162. Had not Mr. Alfred Goldthwaite proposed to give up your notes and take up the paper that Allen, W. & B. had given you; did he not insist on doing so, & did you not insist that they should keep the notes; that the arrangement could be carried out to include your debt with that of Allen, W. & B.?

Ans. Mr. Goldthwaite said to me that if it was his matter that he would insist on me giving up Allen, W. & B.'s note & taking the two notes that I let Allen, W. & B. have against T. P. Ware, & he would take care of their claim, or his claim, & for me to collect my own, but he had instructions from Mr. James H. Allen to carry out the agreement that he had made with me unless other creditors could be kept from attaching for several days, and that T. P. Ware would consent for me to take all of the money that was taken in

411 during that time in payment of my claim, cancelling this agreement for him to pay my $10,000. I told Mr. Goldthwaite that it would not take in one-third enough to pay this claim; besides that was T. P. Ware's matter & I could not do it without his consent.

X Int. 163. What became of the money that was taken in at the Hazlehurst store, of which you had charge, for several days previous to the failure?

Ans. It was turned over to T. P. Ware.

X Int. 164. By whom & when?

Ans. Some of it was turned over two or three nights before the attachment by me; the balance of it was turned over to him on the night of the attachment by G. L. Ware.

X Int. 165. How did you come to go to Jackson to see Judge Harris before going to New Orleans, & what was the object of

412 your visit to Judge Harris before going down there, about the 7th of Nov., 1881?

Ans. I had a letter from Mr. James H. Allen to come to New Orleans & fix up that matter. I supposed it was for T. P. Ware to turn over his stocks, &c., under the agreement which Judge Mays held to Allen, W. & B.

My object to see Judge Harris was to find out if my claim could be included in this sale or transfer without endangering the interest of Allen, W. & B. & myself.

Judge Harris drew up a bill of sale of all of T. P. Ware's effects to Allen W. & Bush for the sum of $25,000, which included my claim.

I delivered the bill of sale to Mr. Allen after he made known what he wanted with me and at once accepted the bill of sale, but said he was not willing to pay me the $10,000 until after he dis-

413 posed of this stock. I refused to make that arrangement with him, but told him that I would not consent to anything unless I got pay for my claim against T. P. Ware.

He then mentioned different ways to pay this claim, none of which suited me. He then told me to take care of my claim and he would do the same.

I left him with that understanding; he followed me, overtaking me somewhere near Gersom's office.

He then said for me to go back with him; that we had always been friends and that he was satisfied that we could fall on some plan by which we could all get our money.

He mentioned different ways, which I did not accept. He asked me then to mention some way or to state what I wanted.

I told him that I had but one proposition to make; that was if he would give me their note, payable 90 days after date, for $10,000 I would turn over the two notes which I held against
414 T. P. Ware to him, and would also give him grounds for attachment against T. P. Ware.

He stated that he would give me the note & pay it provided he was not defeated in the attachment against T. P. Ware.

X Int. 166. You say you had already given him the bill of sale prepared by Judge Harris to all of T. P. Ware's effects?

Ans. I handed him the bill of sale as soon as he told me that he wanted possession of all of T. P. Ware's effects under the agreement held by Judge Mays; but he seemed to recognize my claim against T. P. Ware, and I also handed him the two notes, which he returned to me, I think, with the bill, when I insisted on his giving me $10,000 in cash or something equivalent.

X Int. 167. What became of the bill of sale?

415 Ans. I am not able to say, as it was not considered of any importance to me after he failed to comply with the agreement.

X Int. 168. Was it not the understanding when you left N. O. that if Allen, W. & B.'s lawyer thought that a sale of the goods would stand that it was to be a sale instead of an attachment?

Ans. There was no such an understanding.

X Int. 169. Was it definitely understood when you left N. O. that Allen, W. & B. should attach T. P. Ware?

Ans. It was.

X Int. 170. There was no understanding, then, that in any event Judge Mays should take charge of the T. P. Ware stock?

Ans. Not with me.

416 X Int. 171. The night that Mr. Goldthwaite had the conversation with you at your house did you not tell us both that you had agreed with Mr. Allen that T. P. Ware would sell out to them, make an assignment and prefer them, or give grounds of attachment, whichever might be thought most advisable?

Ans. I did not. Mr. Allen, Mr. Goldthwaite, & myself spoke of all the propositions that was made, both by Mr. Allen & myself, & there was nothing said about leaving anything to any one.

X Int. 172. Did Judge Harris tell you, when you visited him here in Jackson, just before going to N. O.—just previous to the 17th of Nov., 1881, the time he fixed up the bill of sale of which you speak—that Allen, W. & B. could take your note- & include them in your debt with safety & make the money out of T. P. Ware?

417 Ans. My recollection is that Judge Harris told me that if the claim was contested by other creditors it would be hard for him to say how it would be decided, but if Allen, W. & B. advanced the money that I would be safe in accepting it.

X Int. 173. Did you not tell J. H. Allen in N. O. on Nov. 7, 1881, that Judge Harris said they, Allen, West & B., would be safe in paying you the money & including it in their debt?

Ans. I told Jas. H. Allen that Judge Harris said that their buying my claim would be like buying the claim of any other creditor, or something to that effect, & that there was no law that would prevent them from collecting a claim bought from any other creditor; that he considered a claim of that kind as legitimate as though the debt had been contracted direct with them.

418 *Ans.* I did not tell them anything more than I have above stated about what Judge Harris said.

X Int. 174. Did you not tell Mr. Goldthwaite *that* J. M. Allen, in your parlor in Hazlehurst, Miss., on the night of about the 8th or 9th of Nov., 1881, that Judge W. P. Harris said that Allen, W. & B. would be safe in buying your claim & including it in theirs & undertaking to collect it, either by a purchase from T. P. Ware of his stock, or by an assignment of it for their benefit, or by an attachment against T. P. Ware for their debt, including this amount, or words to that effect?

Ans. There was something said about the conversation that I had had with Judge Harris, & I think I told them about the same that I had told Mr. James H. Allen about the conversation. I

419 have no recollection of telling them anything of the kind.

X Int. 175. When you carried the bill of sale of all of T. P. Ware's effects to Mr. Allen for the express consideration of $25,000, just tell us now what effects T. P. Ware had at that time.

Ans. He had a store at Hazlehurst, with something over $20,000 stock; some notes & accounts—don't remember how many and what amount; an interest in a tan-yard near Hazlehurst—do not remember the value of it; a stock of goods at Crystal Springs that was valued at 12 or $14,000. That's all that I know of.

X Int. 176. Did you state in your direct examination that when you turned some notes over to J. M. Allen the day of the attachment, after the attachment was served, *that* J. M. Allen told you those notes belonged to Allen, W. & B.?

420 Ans. I did.

X Int. 177. Did he say how they come to belong to Allen, W. & B.?

Ans. I think he said they belonged to Allen, W. & B. under this or that agreement.

X Int. 178. What agreement?

Ans. He did not say; but the notes had been transferred to me by T. P. Ware in part payment, or some of them in part payment, of the claim I held against him; and as Allen, W. & B. had bought that claim these notes then become the property of T. P. Ware.

X Int. 179. When were these notes transferred to you?

Ans. Some time previous to the 7th of Nov. I am not sure they were all transferred.

421 X Int. 180. How long previous, to the best of your knowledge?

Ans. Not a great while. I am not able to say how long.

X Int. 181. How did you come by those not transferred to you?

Ans. I am not able to say how they came into my possession, it has been so long.

X Int. 182. Did you tell J. M. Allen anything about their having been transferred to you?

Ans. I think I showed Mr. J. M. Allen the backs of the notes when they had been transferred and stated to him that they did not belong to me.

X Int. 183. Did not that interview & the turning over of those notes by you to J. M. Allen come about in this way: Did not

422 J. M. Allen ask you where the books & notes belonging to T. P. Ware were, & say that he wanted to have parties garnished?

Ans. It did.

X Int. 184. Did you not tell him at the same time that the books would not do the other creditors any good, & were not you & T. P. Ware busy that day making settlements and collecting from parties who owed T. P. Ware; and did you not collect a part of the money due on these notes turned over to J. M. Allen & receipt the parties for the same?

Ans. I told Mr. Allen that the books were in the store, and that some of the notes were in my house at that time; he asked me for them. I gave them up, stating that they either belonged to Allen, W. & B. or T. P. Ware. I might have assisted my brother

423 in collecting some notes or accounts and receipted for same in my name, though I do not remember doing so. If I did it was collected for my brother's benefit.

X Int. 185. If you had grounds of attachment against T. P. Ware, and he owed you money and you could not get it otherwise, why did not you attach him and why did you insist on some one else taking your claim?

Ans. I preferred to collect my claim without going into the courts.

X Int. 186. Was that the only reason; &, if so, why were you anxious to keep out of the courts?

Ans. I knew that my creditors would garnish the sheriff in case I obtained judgment on my attachment and that it would be an endless litigation.

424 X Int. 187. You stated in your direct examination that on the night before the attachment was sued out, when it had been arranged for T. P. Ware's creditors to go to N. O. and try to effect an arrangement with Allen, W. & B., that some of the creditors backed

out; is it not a fact that it was arranged for the creditors present & you & J. M. Allen to go to N. O. on the night before the attachment was sued out, & was it not you that backed out & notified the balance of us, after night, that you would not go that night; did you not give J. M. Allen as a reason for not going, when he urged you to do so, that those fellows were just trying to get you off to attach you, and did you not give as a reason you knew this that the telegraph operator had informed you of messages that had been passing through his office; did you not give to the other creditors in
425 Mr. Conn's office that night as a reason for not going that you did not have the list of collaterals that you wanted to exhibit to Allen, W. & B. completed?

Ans. It is a fact that there was an agreement between J. M. Allen & myself to make this proposition in order to delay matters until J. M. Allen could get to Jackson & sue out his attachment, and I may have given the creditors some reason for not going. I had no idea of going, nor do I think Mr. J. M. Allen had; have no recollection of having any conversation with Mr. J. M. Allen that night about the attachment more than I have previously stated.

X Int. 188. Were any of these attachment suits sued out against T. P. Ware about the time of his failure defended?

Ans. He made no defense to any of them.

426 X Int. 189. What interest did J. P. Mathews have in the result of this suit at the time of his death?

Ans. He had no interest. He offered me a house & lot and $2,700, I believe, for my claim, which I accepted, & some writing passed between us, though the money was never paid nor the deed made to the property.

X Int. 190. Just state what — the paper filed with the original papers in this case in the office of the chancery clerk of Copiah Co. signed in your handwrite- in about these words, "J. P. Mathews is entitled to $2,700 out of the amount recovered in this case or in the case of W. P. Ware *vs.* Allen, W. & B.," if there is such a paper.

Ans. I did not know that this paper was to have been filed, as I above stated; I had sold this claim to J. P. Mathews for a house & lot and some money, which he was to pay in a short time &
427 make a deed to the property. I have at home a memorandum of this agreement. I mentioned this matter to Mrs. J. P. Mathews soon after Mr. Mathews' death. She said she preferred not to carry out this agreement, but would get this paper from the chancery clerk & give it to me.

X Int. 191. By whom is the memorandum you have at home signed?

Ans. I think it is signed by both Mr. J. P. Mathews & myself; I am not sure.

X Int. 192. Now, how does this explanation given by you account for the paper in the clerk's office saying that Mr. Mathews is entitled to $2,700 out of this claim?

Ans. I think Mr. Mathews was to pay the $2,700 in money, & this house & lot spoken of was to have been put in as part
428 payment for my claim against Allen, W. & B., — was in the

name of Mrs. Mathews or some one else, the remainder of the claim going to the party in whose name this house & lot was.

X Int. 193. What was the house & lot estimated to be worth?

Ans. I think 12 or 15 hundred dollars.

X Int. 194. Now, then, from your statement, Mathews was to pay $2,700 in money & only get $2,700 back; the other party was to put in 12 or 14 hundred dollars, house & lot, & get the balance of a $10,000 claim. Is that the way you understand it?

Ans. I understand that the whole matter belonged to Mr. J. P. Mathews—house & lot & money—that he was to pay, but he claimed that way of designating his interest from his wife's, and that
429 they were to get the balance of this claim after Calhoon & Green got their fees for collecting.

X Int. 195. What were their fees to be?

Ans. One-half of $10,000 if they collected it.

X Int. 196. Just explain how it was that you gave J. P. Mathews an instrument in writing showing that he was entitled to just $2,700 out of this claim, when, if he was entitled to anything under the trade you made with him, he was entitled to your whole interest.

Ans. This trade was made with J. P. Mathews about the time that Harris, Dodd & Co. paid to the chancery clerk some $1,600. Mr. Mathews stated to me that this amount would be attached by some of my creditors before we could fully consum-ate our trade, & that we would have it understood as that much of the claim
430 would be due him; that he would give the chancery clerk notice, & that he could then fix up the papers according to our agreement.

X Int. 197. Did you not indorse the notes of T. P. Ware to yourself to Allen, W. & B.?

Ans. I did.

Re-examination:

Int. 1. If any one knew of your loan of money to J. P. Mathews—of any payment by him of any part of it—give the name of such person, & say whether such person is living or dead; &, if living, where is he?

Ans. Mr. Ed. Mathews, the brother of J. P. Mathews, was present when J. P. Mathews paid me $500; saw me hand that $500 and $5,000 besides to T. P. Ware. This occur-ed in J. P. Mathews' store. Mr. Ed. Mathews is living in Hazlehurst; can't give the
431 time; think it was during the year 1880.

Int. 2. Say if you know whether T. P. Ware recognizes or repudiates his liability on the two $5,000 notes to you which you gave Allen, W. & B. for the note which is the cause of this suit.

Ans. He never repudiated it, but always considered it a valid debt.

Int. 3. Have you ever endorsed and delivered "Ex. A" to the bill to Mathews?

Ans. I did not.

Int. 4. State whether or not the trade between you and Mathews was not incomplete at the time of Mathews' death.

Ans. It was.

Int. 5. State whether or not the money contemplated to be
432 paid by Mathews had been paid or whether the deed contemplated to be executed had been executed at Mathews' death.

Ans. There had been no money paid nor no deed executed. Mr. Mathews was at the store at which I am working on Sunday previous to the Tuesday that he was killed and agreed with me to pay the money or give satisfactory security and have the deed made to me the next day. The next morning he wrote me a note stating there was to be a mob in town that day, and that we would have to put it off. This instrument of writing that I gave Mr. Mathews was only a few days previous to that, about the 1st of Nov.

Int. 6. Who is the administrator or executor of J. P. Mathews' estate?

Ans. I don't know that they have an administrator. His brother,
L. H. Mathews, has the management of the business; don't
433 think there was any administrator. L. H. Mathews is the surviving partner of J. P. Mathews & Co.

Int. 6. State whether or not the heirs of Mathews have expressed an intention or a refusal to consum-ate the contemplated transaction between yourself and J. P. Mathews?

Ans. I have never heard any of them except Mrs. Mathews say anything about —. She said she could not carry out the agreement.

W. P. WARE.

Sworn to and subscribed before me this 1st day of October, 1884.

L. F. CHILDS,
Special Com'r.

And afterwards, to wit, on the 13th day of November, 1884, an agreement of counsel as to proof was filed in said cause in the words and figures following, to wit:

434 *Agreement of Counsel.*

In the Circuit Court of the United States for the Southern District of Mississippi.

W. P. WARE *vs.* ALLEN, WEST & BUSH *et al.*

It is hereby agreed that the court shall hear all the evidence herein and shall consider only the competent evidence, and shall decide upon the exceptions already filed on final hearing.

JOHN M. ALLEN,
For Def'ts.
CALHOON & GREEN,
Sol's for Compl'ts.

And afterwards, to wit, on the 15th day of November, A. D. 1884, the complainants in said cause filed their bond for costs, which is in the words and figures following, to wit:

435 THE STATE OF MISSISSIPPI, *Copiah County:*

Know all men by these presents that we, W. P. Ware, Cynthia Ware, and G. L. Ware are held and firmly bound unto Allen, West & Bush in the sum of two hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Signed by us, sealed with our seals, and dated this 14 day of Nov., 1884.

The conditions of the above obligation are such that whereas the above-bound W. P. Ware commenced a suit, which is now pending in the circuit court of the United States for the southern district of Mississippi, in chancery, against the above-named Allen, West & Bush:

Now, if the said W. P. Ware shall well and truly, at the determination of said suit, pay and satisfy all the costs which have
436 accrued *accrued* therein in said court, then the above obligation to be null and void; otherwise to remain in full force and virtue.

W. P. WARE. [SEAL.]
C. A. WARE. [SEAL.]
G. L. WARE. [SEAL.]

THE STATE OF MISSISSIPPI, *Copiah County:*

Personally appeared before me, J. P. Groome, a justice of the peace of said county, the sureties for W. P. Ware on his bond for cost in case W. P. Ware *vs.* Allen, West & Bush, who, being duly sworn, depose and say that they are worth the sums set opposite their respective names over and above all their legal liabilities, and that they have visible property to said amounts subject to levy and sale under execution, over and above all property exempt by law from sale for debts, to wit:

437 The sum of C. A. Ware, one hundred dollars; sum of one hundred, G. L. Ware.

C. A. WARE,
G. L. WARE.

Sworn to and subscribed before me the 14th day of Nov'r, 1884.
J. R. GROOME, *J. P.*

Endorsed: Filed Nov. 15, 1884. J. M. McKee, cl'k.

And afterwards, to wit, on the 27th day of November, A. D. 1884, the same being a day of the regular November term, 1884, of said

court, a final decree was made and entered of record by said court in the words and figures following, to wit:

438 In the Circuit Court of the United States for the Southern District of Mississippi.

W. P. WARE, Complainant,
vs. } 372.
ALLEN, WEST & BUSH, Defendants.

Be it remembered that this cause came on to be heard on the bill, answer, replication, exhibits, and proofs, and the court, being thereof sufficiently advised, and being of opinion that the complainant is not entitled to the relief sought, or to any relief, doth order, adjudge, and decree that his bill be, and the same is hereby, dismissed, but without prejudice to any right he may have to bring his suit to recover at law from the defendants any sum that may be due him for services rendered, or upon or for any cause of action other than the promise contained in the instrument of writing dated November 7, 1881, upon which the bill in this cause is brought, and which is exhibited and filed therewith.

439 And it is further ordered, adjudged, and decreed that the defendants recover of the complainant and Cynthia A. Ware and G. L. Ware, the sureties on his cost bond in this cause, the costs of the cause in this court and the chancery court of Copiah county, to be taxed, for which let execution issue, &c., to be levied, &c. And it further appearing to the court that Harris, Dodds & Co., garnishees, have not paid into court the sum of fifteen hundred dollars, with interest from the first day of January, A. D. 1884, as required by the decree of this court, rendered on the 9th day of February, A. D. 1884, it is further ordered, adjudged, and decreed that the defendants have and recovered of the said Harris, Dodds & Co. the said sum of fifteen hundred dollars, with interest thereon from the first day of January, 1884, at the rate per cent. specified in the notes executed by them and now held by the defendants, and that

440 ten days after the filing by them of said notes the defendants, Allen, West & Brush, may have executed therefor, &c.

And it is further ordered, adjudged, and decreed that the clerk of the chancery court of Copiah county pay to the defendants, Allen, West & Bush, the sixteen hundred and thirteen and $\frac{37}{100}$ dollars deposited with him by the garnishees, Harris, Dodds & Co., deducting therefrom the sum of fifty dollars for fees & compensation due said garnishees, upon the filing with them by said defendants of the note upon & for which said payment was made and the receipt for said sum paid by said check.

And the complainants in open court having prayed an appeal to the Supreme Court of the United States, the same is granted upon his entering into bond in the penalty of one thousand dollars, conditioned according to law, and with securities to be approved

441 by the court or judge thereof; but if supersedeas be desired such bond shall be in the penalty and conditioned according, with sureties to be approved as aforesaid.

Ordered, adjudged, and decreed this 22nd day of November, A. D. 1884.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 2nd day of September, A. D. 1885, the complainant filed in said court his appeal bond, which, with the approval of one of the judges thereon, is in the words & figures following, to wit:

442 In the Circuit Court of the United States for the Southern District of Mississippi. In Equity.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

Know all men by these presents that we, W. P. Ware, principal, and G. L. Ware and C. A. Ware, sureties, of the county of Copiah and State of Mississippi, are held and firmly bound unto J. H. Allen, of the city of New Orleans and State Louisiana, T. H. West, of the city of St. Louis and State of Missouri, and J. C. Bush, of the city of Mobile and State of Alabama, partners under the firm name of Allen, West & Bush, in the sum of one thousand dollars ($1,000), to be paid to the said Allen, West & Bush, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each
443 of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 22nd day of August, A. D. 1885.

Whereas the above-named W. P. Ware hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Mississippi, sitting in equity:

Now, therefore, the condition of this obligation is such that if the above-named W. P. Ware shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

W. P. WARE. [SEAL.]
G. L. WARE. [SEAL.]
C. A. WARE. [SEAL.]

444 STATE OF MISSISSIPPI, *Copiah County,* } *ss:*

Before the undersigned officers this day came G. L. Ware and C. A. Ware, sureties on the foregoing bond, and make oath that they are worth the sum of one thousand dollars, in visible property liable to execution, over and above their liabilities and exemptions.

G. L. WARE.
C. A. WARE.

Sworn to and subscribed before me this 22nd day of August, A. D. 1885.

G. D. LOWE, *J. P.*

I approve the foregoing bond and sureties.

R. A. HILL, *Judge.*

Endorsed: Filed Sept. 2, 1885. J. M. McKee, cl'k.

445 *Opinion.*

In the Circuit Court of the United States for the Southern District of Mississippi. Nov. Term.

W. P. WARE *vs.* ALLEN, WEST & BUSH.

This cause is submitted upon bill, answer, exhibits, and proof, from which the following facts appear: The complainant for a number of years prior to November, 1879, carried on an extensive mercantile business in Copiah county, in this State, in his own name and in partnership with others; that he and his brother, T. P. Ware, as partners, carried on a mercantile business in the town of Hazlehurst, in which town complainant then carried on a business in his own name; that about November, 1879, complainant failed; that the business of T. P. Ware & complainant was wound up, leaving nothing to either partner; that complainant in his individual business failed for a large sum, a considerable portion of
446 which remains due and unpaid; that the stock of goods owned by him when he failed was sold and purchased by the judgment creditors, who divided them between them; that a contract was made between T. P. Ware, or by complainant in the name of T. P. Ware, for the purchase of a portion of these goods upon time, with security for the payment of the purchase-money.

That thereupon a new business was commenced in the name of T. P. Ware, but wholly conducted and controlled by complainant; that afterwards T. P. Ware opened a business in his own name at Crystal Springs, in Copiah county; that complainant, acting in the name of T. P. Ware, entered into a contract with Allen, West & Bush as his cotton factors, commission merchants doing business in the city of New Orleans, for advance of money, to be repaid
447 by the shipments of cotton in the usual course of business between country merchants and their cotton factors and commission merchants; that the advancements being heavy, on the 4th day of July, 1881, complainant went to New Orleans to consult with defendants in relation to their business, when defendants, desiring to be secured in their debt due from the business conducted by complainant in the name of T. P. Ware, complainant in the name of T. P. Ware executed an agreement in writing setting forth as a consideration for the promises made therein that he was largely indebted to defendants for advances and facilities in his business, he agreed and obligated himself to protect the defendants in every way possi-

ble, and in pursuance thereof promised by the first day of September then ensuing to have made out a complete list of all his accounts, notes, stocks, goods, &c., and to deposit the same with
448 Judge H. B. Mays, of Hazlehurst, and should it become necessary at any time to use the same to protect defendants that they should have full power and authority to authorize Judge Mays to consum-ate the agreement and to make the same an absolute sale of all the property and assets mentioned, and a delivery of them to Judge Mays for the payment of the sum due. The paper contains other stipulations and promises that need not be stated.

Thus matters stood until the 7th day of November, 1881, when complainant again visited New Orleans and represented to defendants that the house of T. P. Ware was about to fail, and that he held two of T. P. Ware's notes, each for the sum of $5,000, which notes are described in complainant's bill, and that if defendants would pay off the notes or agree to do so he would have T. P. Ware to make an assignment of all the stock of goods in Hazlehurst
449 and also his stock at Crystal Springs, where T. P. Ware was running the store, and would prefer defendants for their claim (then amounting to about $16,000), and to include enough to cover these two notes, or he would have T. P. Ware to sell the stock to defendants, or if an attachment was necessary he would get T. P. Ware to abscond or otherwise get him to act so as to lay grounds for an attachment.

Defendants, being desirous to save their debt, replied to complainants that if they could do so legally and without jeopardizing their own claim they would comply with complainant's request, but desired first to consult their general attorney, J. M. Allen. Defendants first gave a receipt for the notes, which not being satisfactory to complainant, the written promise upon which this suit is based was executed and delivered to complainant, which reads as follows:

Nov. 7, 1881.

Ninety days after date we promise to pay W. P. Ware or
450 order ten thousand dollars for two notes of W. P. Ware, for five thousand dollars each, dated August 21, 1881, one on demand and one at 30 days, provided we are not defeated in the suit against T. P. Ware; if so, this note is void.

Yours truly, ALLEN, WEST & BUSH.

As part of the conference leading to the execution of this paper complainant assured defendants that Judge W. P. Harris, of Jackson, was his attorney; that he, Harris, stated the proposed arrangement was all right and would be valid, and exhibited a letter, purporting to have been written by Judge Harris, announcing the same opinion, with the draft of a bill of sale to consum-ate it, but which are not produced. Defendants informed complainant that they would immediately telegraph their attorney, J. M. Allen, to come and advise them as to the legality of the transaction, but, not being willing to run too much risk in waiting for Mr. Allen,
450½ they employed and immediately sent Mr. Goldthwaite, an attorney of New Orleans, to Hazlehurst to look after the matter

and see what was best to be done until Mr. Allen should arrive, & complainant had informed defendants that the creditors of T. P. Ware were pressing for payment and there was danger they would attach his property. Upon the arrival of Goldthwaite at Hazlehurst complainant and he went to the house of Judge Mays, who then had in his possession the written agreement of the 4 July. Nothing, however, was done until the arrival of J. M. Allen, who decided that the proposed proceedings would not do; that it would defeat the collecting of both the two notes of August 21st and defendants' claim, and that it must be abandoned. Complainants insisted that Judge Harris had decided that it would be valid
451 and that there was nothing or would be nothing illegal in it. Allen replied that he had great confidence in Judge Harris' legal opinion, and a proposition was made that he would visit Judge Harris in Jackson, and if he gave it as his opinion that the contract and proceedings would be valid and binding as against the creditors of T. P. Ware he would agree to it and carry it out. Accordingly Allen came to Jackson, and, upon conference with Judge Harris, both agreed that it would be void if attached by T. P. Ware's creditors. Allen returned to Hazlehurst and so informed complainant, and that he would proceed to attach for defendants' debts alone and did immediately take steps to that effect and had the stock of goods seized. Complainant had full knowledge of these proceedings and aided in their execution. No defence was made to the attachment, and defendants obtained judgment for their debt in this court. In
452 the meantime the goods were, by consent of all parties in interest, sold to defendants for a sum less than defendants' judgment and another which was a prior levy and lien. When the attachment was being levied Allen asked complainant where the books of account and notes were, who replied that the books were where the other creditors could not find them, and that he had the notes, and gave to Allen notes on various parties amounting to about $1,600, a portion of which have since been collected by defendants.

Complainant stated to defendants or to Allen, their attorney, that the not placing of the indebtedness of T. P. Ware to him on T. P. Ware's books and not putting it on his, T. P. Ware's, statement of indebtedness shown to his creditors would be ground for attachment, or asked if it would not be such grounds, and that his pur-
453 pose in not placing it on the books of T. P. Ware was to avoid its being taken by garnishment for his, complainant's, debts.

The proof further shows that after the execution of the paper upon which this suit is brought the defendants were summoned as garnishees, in a court in New Orleans, in a suit against complainant, when complainant requested them to answer that they had none of his effects in their hands. His explanation is that the attachment suit against T. P. Ware had not then been determined.

The proof further shows that after the attachment suit was determined complainant stated to defendants or Allen, their attorney, that he ought to have something; that but for him defendants would have got nothing.

ble, and in pursuance thereof promised by the first day of September then ensuing to have made out a complete list of all his accounts, notes, stocks, goods, &c., and to deposit the same with
448 Judge H. B. Mays, of Hazlehurst, and should it become necessary at any time to use the same to protect defendants that they should have full power and authority to authorize Judge Mays to consum-ate the agreement and to make the same an absolute sale of all the property and assets mentioned, and a delivery of them to Judge Mays for the payment of the sum due. The paper contains other stipulations and promises that need not be stated.

Thus matters stood until the 7th day of November, 1881, when complainant again visited New Orleans and represented to defendants that the house of T. P. Ware was about to fail, and that he held two of T. P. Ware's notes, each for the sum of $5,000, which notes are described in complainant's bill, and that if defendants would pay off the notes or agree to do so he would have T. P. Ware to make an assignment of all the stock of goods in Hazlehurst
449 and also his stock at Crystal Springs, where T. P. Ware was running the store, and would prefer defendants for their claim (then amounting to about $16,000), and to include enough to cover these two notes, or he would have T. P. Ware to sell the stock to defendants, or if an attachment was necessary he would get T. P. Ware to abscond or otherwise get him to act so as to lay grounds for an attachment.

Defendants, being desirous to save their debt, replied to complainants that if they could do so legally and without jeopardizing their own claim they would comply with complainant's request, but desired first to consult their general attorney, J. M. Allen. Defendants first gave a receipt for the notes, which not being satisfactory to complainant, the written promise upon which this suit is based was executed and delivered to complainant, which reads as follows:

Nov. 7, 1881.

Ninety days after date we promise to pay W. P. Ware or
450 order ten thousand dollars for two notes of W. P. Ware, for five thousand dollars each, dated August 21, 1881, one on demand and one at 30 days, provided we are not defeated in the suit against T. P. Ware; if so, this note is void.

Yours truly, ALLEN, WEST & BUSH.

As part of the conference leading to the execution of this paper complainant assured defendants that Judge W. P. Harris, of Jackson, was his attorney; that he, Harris, stated the proposed arrangement was all right and would be valid, and exhibited a letter, purporting to have been written by Judge Harris, announcing the same opinion, with the draft of a bill of sale to consum-ate it, but which are not produced. Defendants informed complainant that they would immediately telegraph their attorney, J. M. Allen, to come and advise them as to the legality of the transaction, but, not being willing to run too much risk in waiting for Mr. Allen,
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and see what was best to be done until Mr. Allen should arrive, & complainant had informed defendants that the creditors of T. P. Ware were pressing for payment and there was danger they would attach his property. Upon the arrival of Goldthwaite at Hazlehurst complainant and he went to the house of Judge Mays, who then had in his possession the written agreement of the 4 July. Nothing, however, was done until the arrival of J. M. Allen, who decided that the proposed proceedings would not do; that it would defeat the collecting of both the two notes of August 21st and defendants' claim, and that it must be abandoned. Complainants insisted that Judge Harris had decided that it would be valid
451 and that there was nothing or would be nothing illegal in it. Allen replied that he had great confidence in Judge Harris' legal opinion, and a proposition was made that he would visit Judge Harris in Jackson, and if he gave it as his opinion that the contract and proceedings would be valid and binding as against the creditors of T. P. Ware he would agree to it and carry it out. Accordingly Allen came to Jackson, and, upon conference with Judge Harris, both agreed that it would be void if attached by T. P. Ware's creditors. Allen returned to Hazlehurst and so informed complainant, and that he would proceed to attach for defendants' debts alone and did immediately take steps to that effect and had the stock of goods seized. Complainant had full knowledge of these proceedings and aided in their execution. No defence was made to the attachment, and defendants obtained judgment for their debt in this court. In
452 the meantime the goods were, by consent of all parties in interest, sold to defendants for a sum less than defendants' judgment and another which was a prior levy and lien. When the attachment was being levied Allen asked complainant where the books of account and notes were, who replied that the books were where the other creditors could not find them, and that he had the notes, and gave to Allen notes on various parties amounting to about $1,600, a portion of which have since been collected by defendants.

Complainant stated to defendants or to Allen, their attorney, that the not placing of the indebtedness of T. P. Ware to him on T. P. Ware's books and not putting it on his, T. P. Ware's, statement of indebtedness shown to his creditors would be ground for attachment, or asked if it would not be such grounds, and that his pur-
453 pose in not placing it on the books of T. P. Ware was to avoid its being taken by garnishment for his, complainant's, debts.

The proof further shows that after the execution of the paper upon which this suit is brought the defendants were summoned as garnishees, in a court in New Orleans, in a suit against complainant, when complainant requested them to answer that they had none of his effects in their hands. His explanation is that the attachment suit against T. P. Ware had not then been determined.

The proof further shows that after the attachment suit was determined complainant stated to defendants or Allen, their attorney, that he ought to have something; that but for him defendants would have got nothing.

These, I believe, are about all the facts that need be stated to an understanding of the questions to be decided. It is insisted upon the part of complainant that the written contract upon which
454 the suit is brought is a promise to pay the sum of ten thousand dollars ninety days after date, with but one condition, and that is that defendants should be defeated in their suit against T. P. Ware, and that that event has not occur-ed, but, upon the contrary, defendants were successful in that suit, and that no parol agreement or evidence is admissible to defeat the relief sought in the bill. The general rule is that parol evidence is inadmissible to contradict a written agreement, but this, like almost all other general rules, has its exceptions. Parol evidence is admissible to show a want or failure of consideration.

Parol evidence is also admissible to show that the parties have abandoned the written contract or made a new contract by which the written contract is made null and void. Parol evidence is also admissible to show that the written contract is only to take
455 effect upon the happening of some other event necessary to bind both parties to it. Parol evidence is also admissible to show that the written contract was procured by misrepresentation and fraud or that it is against public policy and void. In all such cases parol evidence is admissible to show the circumstances leading up to the making of the written contract, in order to determine its character; otherwise no relief could be given against a void, illegal, or other inequitable written contract which one party might procure from another. It is further insisted upon the part of complainant that, having shown a *prima facie* right to a decree for the amount due upon this written contract and without being compelled to show any fraud, the defendants cannot set up any fraud upon his part to defeat his recovery. The rule is certainly true that when
456 two parties enter into a fraudulent or illegal contract in which both are equally culpable courts will not aid either, but will leave them as they have placed themselves, but this, like other general rules, has its exception, and that is where one is more guilty than the other, and especially so where the more guilty party has by misrepresentation or other unequal advantage induced the less guilty party to enter into it. In such cases the courts will relieve the less guilty. The rules of law first stated are those upon which complainant's counsel mainly rely to obtain a decree for the sum claimed and to defeat the defendants of the defence set up against the relief sought by the bill. A very large number of authorities have been read and commented upon by the learned and astute counsel on both sides in maintainance of their respective
457 positions, but when examined I am satisfied they establish both the rules and exceptions as above stated. Reference and comment on these authorities would extend this opinion to too great a length, so that it only remains for me to apply these rules to the facts above set forth. I am satisfied that whether the business done in the name of T. P. Ware was, in fact, his individual business or that of complainant, or of both, that as complainant was the entire

manager and controller of it he cannot set up any right growing out of the business in his own behalf; that would be a fraud if done by T. P. Ware. If complainant was really the party in interest, either individually or as a partner, then the two notes executed and claimed as the consideration for the notes sued upon were not due to complainant,
458 but in case he was the owner of the business he controlled in the name of T. P. Ware he was the debtor and not the creditor. If they were jointly interested, then he was the joint debtor, as there is no evidence that the money was used otherwise than in the business.

Again, it is admitted that if the money was paid by complainant to T. P. Ware it was done secretly and was not put upon the books of T. P. Ware, and which was done, first, to defraud the creditors of complainant and, secondly, to defraud the creditors of T. P. Ware. Complainant seems sensible of this fact and gave that as grounds for attachment against T. P. Ware. Complainant was the sole manager of the business under his charge, and if a fraud was practiced upon his own creditors and those of T. P. Ware he did it and can obtain no advantage from it. It is admitted that his purpose
459 in placing the notes in the hands of defendants was to place them beyond the reach of his creditors.

So far as he was concerned the whole scheme in carrying it out was for the same purpose; if not there was no necessity to place them in the hands of any one. He could have secured himself in any way he choose. So far as the transaction of the business was concerned he was the sole actor and T. P. Ware but a figure-head.

The defendants' purpose, as it appears, was only to collect an honest debt due them, which, before anything was known by them of complainant's real or pretended debt, he had by solemn promise in writing obligated himself to secure and upon which his credit was extended and in which there was no fraud upon the part
460 of the defendants, at least up to the time complainant proposed to them to aid him in securing the payment of the two notes claimed to be due and which they seemed unwilling to enter into if illegal and fraudulent, and so far as the proceedings went were induced to do so by the representations of complainant, so that complainant and defendants stand on a very different footing and — which, under the exception to denying relief in cases mixed with fraud, the defendants may set up the fraud of the complainant.

The written contract upon which the suit is based is not commercial paper, and if it was this suit is between the contracting parties. Complainant is not entitled to a decree is his favor without showing that defendants had a suit with T. P. Ware; the contract does not sufficiently describe what kind of suit was meant, whether
461 one then in existence or thereafter to be brought, which requires testimony to explain the ambiguity; and as that suit has to be brought before the court its character and quality may be inquired into to determine whether or not its decision will have the effect of validating or invalidating the obligation of the written contract.

Upon this examination I am satisfied a disclosure of fraud upon the part of complainant is found which debars him from a decree in his favor.

But if I am mistaken in all these conclusions I am satisfied there is another available ground of defense to the claim of complainant, and that is that the contract and agreement between the parties was never consum-ated. The testimony, all taken together, shows that the execution of the written contract and its delivery to complainant was only intended to become binding upon condition that J. M.
462 Allen, defendants' attorney, should decide that the two notes could be collected either by an assignment of the property and assets held in the name of T. P. Ware or by a purchase of the same by defendants or by attachment, including these notes and the debt due defendants. The decision of both J. M. Allen and Judge Harris was that these demands against T. P. Ware could not be maintained against the creditors of T. P. Ware, and so far at least as the defendants were concerned it was abandoned as to the claim on the two notes, and of which fact complainant was notified and did not dissent therefrom and did not set up any claim for the payment of the amount stated in the written contract or paper of Nov. 7th, 1881, until about a year after the suit against T. P. Ware was determined.

It is true that complainant aided defendants in their at-
463 tachment proceedings, but so far as he could do so legally he was under obligation so to do under the agreement of July the 4th. I am also satisfied that he expected defendants, as far as they could do so, to provide for the payment of these two notes or, at least, to receive compensation in some way for the aid given, and the defendants did show a disposition to aid him by employing him and giving him an opportunity to purchase the goods and assets—in other words, to give him what might be left after payment of their judgment.

If I am correct in the conclusion, 1st, that the agreement and contract between complainant and defendants was only in progress and never consum-ated; and, secondly, that if it was at one time consum-ated, but by both parties afterwards abandoned, then, in either case, the rule involved that no parol agreement or evidence to sustain the same to contradict a written contract does not
464 apply, and the defense set up in the answer must prevail.

The result is that complainant's bill must be dismissed, but without prejudice to complainant's bringing his suit to recover from defendants any sum that may be due him for services or any cause of action other than a recovery upon the written promise contained in the writing of Nov. 7, 1881, and upon which this suit is founded. The defendants will have their decree for the costs of this cause.

R. A. HILL, *Judge.*

465 UNITED STATES OF AMERICA, }
Southern District of Mississippi, } *sct:*

I, Jas. M. McKee, clerk of the circuit court of the United States for said district, hereby certify that the preceding annexed 464 pages contain a true and complete transcript of the record of said court in the cause therein stated and of the opinion of the court therein as the same now remains in our said court.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at office, in Jackson, in said district, this 1st day of October, in the year of our Lord 1885.

{Seal U. S. Circuit Court, Southern District of Mississippi, 5th Circuit.}

JAS. M. McKEE, *Clerk.*

Endorsed on cover: S. Mississippi C. C. U. S. No. 369. W. P. Ware, appellant, *vs.* J. H. Allen, T. H. West, and J. C. Bush, partners under the firm name of Allen, West & Bush. Filed October 12, 1885.

Office Supreme Court U. S.
FILED.
MAY 6 1888
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

W. P. WARE
vs.
J. H. ALLEN, *et al.*
No. 369.

S. S. CALHOUN,
MARCELLUS GREEN,
Sols. for Appellant.

R. O. POLKINHORN, PRINTER.

Supreme Court of the United States.

W. P. WARE
vs.
J. H. ALLEN, *et al.* } No. 369.

Assignment of Errors.

Comes the appellant, by attorneys, and says that manifest error hath intervened to his prejudice in the record herein, and, for causes, assigns:

1st. The court erred in not excluding from consideration, on complainant's exceptions, the interrogatories to and answers of witnesses Goldthwaites, J. H. Allen, J. M. Allen and Reynolds, specified on R. 76, tending to prove that Exhibit "A" to the bill was executed and delivered upon a contemporaneous parol condition other than and contradictory of that expressed in Exhibit "A;" and as attempting to vary a written instrument by parol colloquium before its execution variant from and contradictory thereof; and as irrelevant; and because the answer avers affirmatively that the parol agreement and Exhibit "A" were executed by complainant and respondent in pursuance of a common scheme to de-

fraud the creditors of T. P. Ware; and because the answer avers that the said parol agreement and Exhibit "A" was entered into by Allen, West & Bush to overreach and deceive W. P. Ware.

Under agreement (R. 127), the court was to hear all evidence, but consider only the competent evidence, and the opinion shows that all was considered.

2d. The court erred in not granting the relief prayed on the bill and answer; and on the proof, and in denying the same and in dismissing the bill, and for other errors apparent, &c.

S. S. CALHOUN,
MARCELLUS GREEN,
Sols. for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

W. P. WARE
vs.
J. H. ALLEN, *et al.*, composing the firm of Allen, West & Bush. } No. 368.

Abstract for Appellant.

This was a proceeding in chancery under the statute of the State of Mississippi, giving to the chancery court jurisdiction in foreign attachment cases, by foreign attachment, by the appellant against the appellees in the chancery court of Copiah County, and subsequently removed to the Federal court by appellees.

Bill.

(R., 1.) The bill alleges that on Nov. 7th, 1881, Allen, West & Bush signed and delivered to appellant their written promise, a copy of which is filed as EXHIBIT A to the bill, whereby they promised ninety days thereafter to pay him or order $10,000, for two notes of T. P. Ware for $5,000 each, provided they were not "defeated" in the suit against T. P. Ware, in which case (of such defeat) said promise to be void; that thereupon (R. 2) appellant handed them said two notes of T. P. Ware, duly endorsed, and that they were not defeated in their suit, but realized from it a large sum of money; alleging, also, refusal to pay and non-residence.

(R., 2.) Exhibit "A" to the bill is as follows:

"NEW ORLEANS, *Nov. 7th*, 1881.

"Ninety days after date we promise to pay W. P. Ware or order ten thousand dollars for two notes of T. P. Ware for five thousand dollars each, dated August 21, 1881, one on demand and one at thirty days, provided we are not defeated in the suit against T. P. Ware; if so, this note is void.

"Yours truly,

"ALLEN, WEST & BUSH."

(R., 9.) The bill was taken for confessed against Thos. H. West and Jas. C. Bush, because the answer was not sworn to by them.

Answer.

(R., 4.) James H. Allen answered in the name of the firm: "They admit the signing and delivery to complainant, of *Exhibit A* to the bill, but deny it

imposed legal or moral obligation for these reasons: that at the time of executing *Exhibit A* to the bill, and long prior thereto, complainant had been carrying on business, in Hazlehurst, in the name of his brother, T. P. Ware, where complainant (W. P. Ware) a few years previous had failed, owing largely, and he was doing business in the name of T. P. Ware as a screen or shield to deceive and defraud the creditors of W. P. Ware, complainant, and while being so conducting the business became indebted to Allen, West & Bush for money advanced (R. 5) in the sum of about $16,247.86, and that *Exhibit A* was executed under the following circumstances: Complainant (W. P. Ware) came to New Orleans and represented that the house of T. P. Ware was about to fail, and that he, W. P. Ware, held T. P. Ware's two notes for $5,000 each, and proposed "that if these respondents would pay off his notes or agree to do so," he would have T. P. Ware make an assignment and prefer respondents for their claim and include enough to cover the claims of complainant, or sell to them sufficient to cover their claim and complaininant's and would have T. P. Ware abscond; and that his, Ware's, attorney had assured him that either the sale or assignment would be good in law; and that he insisted that the respondents should include these notes in the sale or assignment which T. P. Ware was to make and which he proposed to guarantee.

(R., 13.) "These propositions were accompanied with intimations, if not threats, that unless complainant's demands were complied with these respondents would probably lose their debt, respondents being largely interested, and feeling assured of the

control of the complainant over the goods, which constituted the only assets out of which they could collect their debts, and believing that T. P. Ware was altogether under the control of W. P. Ware, they were anxious to come to some agreement by which they could prevent him from making some fraudulent disposition of the goods, before they could have opportunity to secure themselves."

That they telegraphed for Jno. M. Allen, their attorney, and asked W. P. Ware to wait until he arrived before executing any papers, promising him that if their attorney advised them that they could, without risk, make an assignment by which he could be secured in his money or what he claimed, that they would do it, but without advice, were unwilling to take such a step. "Complainant assuring them that his attorney had assured him that they could assume his claim and charge it to T. P. Ware and include it in their claim without any risk," but being in a great hurry, complainant insisted that respondents should (R. 6) take T. P. Ware's notes and give him *Exhibit A* to the bill, and that he would go back to Hazlehurst and keep things straight until J. M. Allen arrived, and that if he (J. M. Allen) thought that respondents would not be safe in trying to collect this amount from T. P. Ware by assignment or sale, or that "respondents would be endangering their own by it, he would abandon it," and that it was with this distinct understanding and agreement that *Exhibit A* was given to complainant; "that the suit referred to in Exhibit A against T. P. Ware was because we were confident if a sale or assignment was made to us, including these notes * * * it would be attacked and attached by other creditors,

and respondents would have to defend by suit for the maintenance and recovery of the money claimed to be due on these notes from T. P. to W. P. Ware in a suit in (R. 7) which this amount was to be included." "Respondents deny that they ever sued for or collected one dollar or one cent from T. P. Ware or any suit in which these notes cut any figure or formed any part of the matter in dispute, and the suit referred to in this paper (Ex. A) was never brought, but was abandoned under a subsequent agreement between complainant and these respondents."

(R., 6.) That upon J. M. Allen's arrival, after he was made fully acquainted with the facts, he advised them to have nothing to do with the claim of *W. P. Ware* vs. *T. P. Ware*, and that "J. M. Allen then went to Hazlehurst to inform W. P. Ware of his determination in the matter;" that after talking with complainant about it, and informing him of his determination, W. P. Ware said Judge Harris, of Jackson, was his attorney, and that if Mr. J. M. Allen would go to see him and talk with him he, complainant, would release respondents from the agreement contained in EXHIBIT A; "and Mr. Allen, having great confidence in the legal ability and integrity of Hon. W. P. Harris, said he would abide by what he said, and went to see Judge Harris, and he said, under the circumstances, he could not advise respondents to make an attempt to collect the claim of complainant; that they would be jeopardizing their own claim, and would be in great danger of losing it, and advised against it;" "of all which complainant was duly informed;" that the notes were not given back to complainant, was not known to respondents for some time afterwards; that the

notes were given to J. M. Allen, who had the management of respondents' claim against T. P. Ware, and he said "they were by mistake mislaid, and not known by him to be in his possession," and the said two notes of T. P. Ware are filed with the answer, "to be returned by order of the court to complainant."

"Now, these are the circumstances under which the note or contract sued on was given, and respondents say that the notes given by T. P. Ware to W. P. Ware, if ever given at all, were without consideration, and represented a simulated debt; that that and the agreement of ————————, under which the writing sued on was executed was obtained, was but a common scheme of fraud, in which the creditors of the business done in the name of T. P. Ware were to be sufferers, and is therefore all void and fraudulent, and of no effect."

Exhibit to Answer.

(R., 7.) The two notes of T. P. Ware, filed with the answer, are negotiable promissory notes, each for $5,000, endorsed by W. P. Ware, the payee specially to Allen, West & Bush.

Evidence for Respondent, Appellees.

(R., 18-19.) Judge T. E. Cooper testified that he had garnished upon debts due by W. P. Ware, the firm of W. P. Ware & Co., in 1878, and that the firm was composed of W. P. Ware and T. P. Ware, and that T. P. Ware was appointed receiver; that the receivership did not yield anything for W. P.

Ware's creditors ; that after this he garnished T. P. Ware, who was doing business in his own name, as being indebted to W. P. Ware, and both Wares testified that T. P. Ware did not owe W. P. Ware anything, and that W. P. Ware had no interest in the business, but was a (R. 19) clerk. This was in 1879 or 1880.

(R., 16.) The questions and answers were objected to as incompetent.

(R., 21.) JAS. C. REYNOLDS, for respondent : That on November 7th, 1881, J. H. Allen and W. P. Ware had been conversing off and on all day long. Late in the evening they both came to my desk ; J. H. Allen said he had made an arrangement to receipt to Ware for T. P. Ware two notes of $5,000 each, and handed me the notes and directed me to write a receipt which witness did. (Receipt, R., p. 20.) After writing the receipt W. P. Ware objected to it to J. H. Allen. Ware and Allen then had further private conversation, and just before Mr. Ware left, under directions from J. H. Allen, (R., 22,) witness wrote the contract upon which this suit is based, and Ware left.

Complainant objected to the questions eliciting this as incompetent and irrelevant. (R., 24.)

(R., 38.) JAS. H. ALLEN, for respondent, resides in New Orleans and is a member of Allen, West & Bush ; had a conversation with W. P. Ware on November 7th, 1881, and he told me it was impossible for T. P. Ware to go in business ; that there was a large amount of paper falling due, and there were a number of drummers at Hazlehurst who were liable at any time to attach, and, if so, we were liable to lose our whole debt ; that he had two notes of T. P.

Ware for $5,000, for loaned money; "that if we would buy these notes from him that he would have T. P. Ware sell us both stores * * * and everything he had, or make an assignment or do anything whereby we could save our debt and these two notes which he held of T. P. Ware;" that T. P. Ware owed Gerson, and if he did not sell to us that Gerson had offered him a large amount and he would sell to him; that he told W. P. Ware that they had his brother's verbal and written "obligation in the hands of Judge Mays in which they promised to protect us in any emergency." (NOTE.—The agreement referred to is on Rec., p. 54, and is dated July 4, 1881, and is a covenant by T. P. Ware, that at any time, Allen, West & Bush shall have the right "to consummate this absolute sale without any reservation whatever.")

(R., 39.) That witness was afraid that he could not legally take the T. P. Ware notes and that it would jeopardize their whole debt by making it a part; that W. P. Ware showed witness a *pro forma* bill of sale or assignment purporting to be drawn by Judge Harris, and also a letter purporting to be from Judge Harris, to whom addressed he did not remember, saying that this sale or assignment drawn as suggested by the document, with the two T. P. Ware notes included would be binding; that he insisted that he could not take these two notes unless J. M. Allen, his attorney, would say it could be legally done without jeopardizing their own claim; that Ware told him that he did not want witness to jeopardize his debt by these notes; witness then told him "that he would telegraph for Jno. M. Allen and would send him to Hazlehurst, and if his at-

torney and ours would say that we could legally include these two notes in our claim we would do so, but not otherwise." "He agreed to this, and just before the time for him to go to the train for Hazlehurst, W. P. Ware said he wanted some document to show our agreement in case our attorneys so agreed."

We first gave him a receipt for the two notes which is annexed, marked "A," but he said that was not satisfactory, as we made no promise in case our attorney and his agreed to include his claim in our account against T. P. Ware. We then hurriedly wrote the other paper which is the basis of this suit, but it is written on the same terms and understanding on which the above receipt was written, that the said paper was to be null and void and worthless unless we could include the two notes in the T. P. Ware debt and collect them—but as both his attorney and ours advised against including them they were never included in our account against T. P. Ware, and we have never tried to collect one cent on them and always regarded them as Ware's paper and not ours, and soon after our attachment instructed our attorney, John M. Allen, to turn them over to Ware to take up the paper which is the basis of this suit."

Int. 7. R., 26. If you know, explain what is meant in the writing sued on in this case by the words "provided we are not defeated in the suit against T. P. Ware; if so, this note to be void?" Said Allen answered: (Rec., 40.)

"W. P. Ware had two notes of T. P. Ware of $5,000, which he said was for money loaned to T. P. Ware by him, when T. P. Ware first went into business at Hazlehurst, and that he wanted us to include

them in our debt against T. P. Ware, and if we could legally hold them and collect them by sale or assignment or any other way, then we were to pay him, but W. P. Ware told us unless his attorney and ours agreed that the notes were legal and we could in law hold and collect them as part of our just debt against T. P. Ware, and if they were included in our debt, and were thrown out by the court as illegal, then the paper we gave him was to be null and void, just as if it never had been given."

Ans. Int. 8. "W. P. Ware told me that Judge Wiley P. Harris said that a sale or assignment with these notes included would be legal and would be sustained by the courts, but I knew with these notes included that there would be a hotly contested suit against their being allowed in any event whether by sale or assignment or otherwise. My idea, and W. P. Ware said it was his idea also, based upon the document purporting to be from Judge Harris, in whose legal opinion I have great confidence, was that a sale or assignment including these two notes would be legal. W. P. Ware told me whatever was done the other creditors would be sure to attach as fraudulent and he, W. P. Ware, would have T. P. Ware to leave the State, and could also make the bond for us in Hazlehurst, which would be a very large one, to bond the goods, so that in the event of the sale or assignment being made to us and attached by the other creditors, we could at once reopen the store and go on selling and have the sale of said goods go uninterrupted during the attachment suit of the other creditors, and this was my idea of the suit referred to in the document in question." "I told him I remembered the paper (11th Int.) (Ex. A). And that he remembered also that there was no claim to be made on us whatever, unless his lawyers and ours agreed that these two notes be included and collected in our debt against T. P. Ware; otherwise that paper was null and void." (R., 1.) "That, as his attorney and ours had both advised against including them, they were not included in our debt against T. P. Ware,

and, as he had never once mentioned the matter to us, that he knew he had no show of a claim against us in the matter. He said we ought to pay him something, for if it had not been for him we would have lost our whole debt.

"I told him that as we did not owe him one cent on his claim, and he knew it, that I would not give him one-thousandth part of a cent for them, as I had fully carried out my part of the agreement for him, as I had promised to try and collect them for him if his attorneys and ours agreed that they could be collected, but as they had both advised against it he should at once have given up the paper to our attorney as he had agreed to do."

That witness (Rec., 41) had written a letter to Calhoun & Green in reference to the claim, as also to W. P. Ware, in 1883, to W. P. Ware, as follows:

(A. 49.) "As the paper was acknowledged to be worthless by us all, unless T. P. Ware made an assignment or sold out to us and the sale or assignment was sustained by the courts; but if our lawyers agreed that neither of these could be done the paper we gave was null and void."

(Rec. 49.) And to Calhoun & Green:

"A few days before T. P. Ware's failure W. P. Ware came to New Orleans and told us that he held T. P. Ware's note for ten thousand dollars, and as T. P. Ware's creditors were pressing him, he wanted to transfer T. P. Ware's note to us, and he would get T. P. Ware to sell out to us or make an assignment in our favor, as T. P. Ware had plenty to secure, both his debts and ours, by a sale or assignment. We told him we feared it could not be legally done, but we would telegraph our attorney, Mr. John M. Allen, and if he and Mr. Ware's attorney, Mr. W. P. Harris, said that we could legally buy T. P.

Ware's notes, and a sale or assignment by T. P. Ware would hold good in law and secure our debt, we were willing to do so, but not otherwise, and we had serious doubts about it standing in law. Mr. W. P. Ware asked us to give him this paper which you hold, and if his attorney and ours did not approve of T. P. Ware's selling or assigning to us to cover our debt and the $10,000 notes which W. P. Ware held, then the paper we gave W. P. Ware was null and void, and of no effect whatever, and was to be returned to us or be destroyed."

"(R., 42.) W. P. Ware insisted upon our buying the two $5,000 notes of T. P. Ware which he held, and including them in our debt against T. P. Ware, as he said that his attorney said that it could be legally done.

"(R., 43.) He, W. P. Ware, told me that Judge Harris said that either one would be legal, and W. P. Ware's idea and mine was that one of these (sale or assignment) would be the legal steps his attorneys and ours would take to secure our debt.

"That Jno. M. Allen came to New Orleans in response to a telegram, 'and I told him the whole conversation I had had with W. P. Ware.' I told him I wanted him to go to Hazlehurst and see Judge Harris and the Wares, and if it was legal I wanted him to include the two notes of T. P. Ware, and to buy the stock or have an assignment made, or in some way to secure our debt against T. P. Ware, and also to secure W. P. Ware's ten thousand dollars claim against T. P. Ware, if it could be legally done through us.

"That witness and Jno. M. Allen talked about the Ware matters, in reference to secure the T. P. Ware debt, and also talked about the notes as stated in last answer (*supra*).

"(R., 44.) That they sent Goldthwaite, an attorney, to be on the spot to be on hand until Jno. M. Allen arrived, and instructed him 'to do nothing,' unless it was absolutely necessary, before our regular attorney, Jno. M. Allen, could arrive, but to keep

us posted, and if it became absolutely necessary to act, 'our idea was to buy the stock or have an assignment made in our favor, as before stated.'

"(To 28th ×-Int., R., 45.) That in the conversation between witness and Ware 'nothing was said about attaching or selling out in bulk.'

"(To 29th.) That he does not remember telling Jno. M. Allen anything about suing out an attachment. 'I told him, Jno. M. Allen, of W. P. Ware's conversation with me, and what Ware said that Judge Harris had said about a sale or assignment, and that our idea was that that was the most expedient and safe way of saving our debt.' We furthermore told him if it was legal and safe for us to do so, we wanted him to include two notes W. P. Ware had left us in our claim against T. P. Ware, but we told Jno. M. Allen to exercise his own good judgment in what was best to be done to save our debt, as this was the matter for which we were working.'

"(To 32 ×-Int.) That Jno. M. Allen did attach T. P. Ware for about eighteen thousand dollars; that Jno. M. Allen sent us a list of notes he said the Wares had given him; that upon these notes was collected $478.00, the majority of which was credited to Joe Brocks Allen's account, who was the agent of Allen, West & Bush, who purchased the stock of goods under attachment at Hazlehurst, but that they all should have been credited to the T. P. Ware account, and directions had now been given to so credit them.

"R. 29 is a list of notes, amounting to about $1,500, which were delivered to Jno. M. Allen by the Wares at the time of the attachment, and upon which $478.48 was collected. (Ans. 37th ×, p. 46.)

"R. 30 is a letter, dated November 15, 1881, from Allen, West & Bush to T. P. Ware, stating that, 'in view of the fact that the various parties who have attached you will be after the notes and accounts which are due you, would it not be well for our agent, J. Brooks Allen, to come at once to Ha-

zlehurst and have you furnish him with a list of the accounts, &c., and have him at once garnishee every one of them, and keep other parties from molesting them, and thus greatly facilitate matters?'

"Postscript.—'Bob Miller, of Hazlehurst, was here to-day. He professes to be a great friend of yours, and willing to help; says the other parties can garnishee the acc'ts, &c., and give much trouble.'

"R. 32 is a letter from Allen, West & Bush, dated November 18, 1881, to W. A. Collins & Co., informing them that they hold their note for $90.60, payable to Ware, and to remit to them and pay no one else. This was one of the notes turned over to Jno. M. Allen by W. P. Ware after the attachment. (See R., 29.)

"R. 36 is a letter from Allen, West & Bush to W. P. Ware, dated New Orleans, May 10, 1882, stating that 'we had been called on for copies of every letter received by us from yourself and T. P. Ware and every letter mailed by us since we first commenced doing business with T. P. Ware. In some few letters written by you for your brother, T. P. Ware, and in connection with his business, you speak of 'me.' As you were in your brother's employ, as his clerk, we always understood such expressions to refer to T. P. Ware only.'

"(R., 51.) Mississippi Mills attached W. P. Ware on December 19, 1881, and served a garnishment upon Allen, West & Bush.

"(R., 53.) On December 20, 1881, in reply to a letter of Allen, West & Bush, W. P. Ware wrote that the funds that he had with Allen, West & Bush had been, by his direction, placed to the account of G. L. Ware and of his father, and that he had told their bookkeeper who the different amounts belonged to, and to transfer it to the proper account. So you will please answer that you are not in possession of any of my effects.

"On December 22, 1881 (R., 52-3), James H. Allen answered the garnishment, stating that he was not indebted to W. P. Ware.

"ALFRED H. GOLDTHWAITE (R., 58, Ans. to Int. 3), for respondent, testified, 'that early in November, 1881, he was employed by Allen, West & Bush to go to Hazlehurst to look after the claim of his firm against T. P. Ware. Jno. M. Allen was the attorney for Allen, West & Bush in Mississippi, and it was understood that I was not to take any steps in court until J. M. Allen could reach Hazlehurst, unless there was a necessity to act promptly, in which case I was to use my discretion. Other creditors were pressing their claims, and it was feared that attachments would be sued out, and delays would be dangerous.'

"(5, Int. 58.) That an interview between W. P. Ware, J. M. Allen, and witness was held in Ware's parlor, 12 o'clock midnight, upon the arrival of J. M. Allen in Hazlehurst, and that he told Allen what he knew, and that something would have to be done, as the creditors were getting very impatient, and each one waiting for the other to move first, but were all afraid to attach, because they did not know of any overt act to justify an attachment. 'W. P. Ware had one or more notes made by T. P. Ware, his brother, for about ten thousand dollars, which he was very anxious to secure the payment of. The business had been conducted in the name of T. P. Ware, who owed W. P. Ware this amount. W. P. Ware wanted Allen, West & Bush to join, or rather assume, the debt of T. P. Ware, and, whatever they did, to treat the $10,000 due W. P. Ware as a part of the debt due by T. P. Ware to Allen, West & Bush. Allen, West & Bush's claim or debt was about $18,000. W. P. Ware wanted them to make out their claim as if T. P. Ware owed them $28,000. If they attached, to attach for $28,000; if they took a bill of sale, to make the consideration $28,000. He had gotten some kind of a paper from Allen, West, & Bush, when in New Orleans, that gave him some hope that they would help him. I never saw the paper, though I may have seen a copy of it. In the conversation at W. P. Ware's house all this was

talked over, and Ware urged Jno. Allen to do this. Allen did not think it could be done, and asked me what I thought of it. I advised against it, as I thought that a bill in equity would set aside any assignment or sale made with such a purpose, and the attachment would be set aside when the true facts were developed, as they certainly would be on the trial. Ware finally said he had seen Judge Wiley P. Harris, at Jackson, and he had said it could be done. Allen remarked that he had great respect for Judge Harris' opinion, and he would go to Jackson and consult with Judge Harris. The matter was discussed for some time, but Allen was firm in his opinion that any attempt to save W. P. Ware by amalgamating his claim with Allen, West & Bush's would jeopardize the whole of Allen, West & Bush's claim. Allen finally said that he would go on the freight train to Jackson and see Judge Harris, and defer to his opinion.'

R. 60 to 7 Int. he said: "James H. Allen, if I remember correctly, showed me a copy of the paper he had given W. P. Ware, and I advised him to get it from W. P. Ware if he could. It was unnecessary, and might give him trouble. When I went to Hazlehurst I was instructed to get the original, if possible, from W. P. Ware. This I was not able to do."

62 to 14 Int. he said: "There was no pre-arrangement about this, as Jno. Allen did not know he would have to go to Jackson until Ware mentioned Judge Wiley P. Harris' opinion."

DEPOSITION OF J. H. ALLEN IN THE CASE OF H. T. COTTAM & CO. VS. T. P. WARE IN THE STATE COURT. (TO 8TH, R. 72.)

"W. P. Ware stated to me in this conversation (in N. O., Nov. 7, 1881) that T. P. Ware and one of his clerks, a Mr. Guisic, had gone West and North early in the fall, and had foolishly bought a large

stock of goods, and had made the paper payable in a very short while, much of which paper had already fallen due, and we had paid the same; some had just matured, which we were refusing to pay, and the rest was rapidly maturing; that the creditors of T. P. Ware were all very uneasy, and that unless T. P. Ware could get immediate relief and pay those parties, he thought he would be attached. He thought if we were not willing to pay these debts of T. P. Ware that were past due and falling due, that we were in danger of losing our debt. He also said that when T. P. Ware had first gone into business he, W. P. Ware, had loaned T. P. Ware ten thousand dollars. W. P. Ware also said if he would pay him the ten thousand dollars that T. P. Ware owed him, he would get T. P. Ware to sell out to us, so we would save our own debt. He also asked us that in case we were not willing to buy out T. P. Ware, if he, W. P. Ware, would give us information by which we would have legal grounds of an attachment, would we then buy his claim against T. P. Ware. He assured us that up to that time there were no grounds under which an attachment could legally be levied. We told W. P. Ware that we were very anxious to save our debt, and if we could legally buy his claim against T. P. Ware and save our whole debt, we were willing to do so, but that we could do nothing, nor could we make him any promises whatever, until we had seen our attorney and had his advice as to whether we could do so legally; that we would despatch our attorney to come at once, so that we could consult him in the matter."

Int. 12 in said Cottam suit, p. 67, to J. H. Allen: "State whether or not you procured the attorney of Allen, West & Bush to go with W. P. Ware to consult with W. P. Harris a few days before you attached T. P. Ware; if so, for what purpose and at whose solicitation was said consultation held?"

Ans., p. 72. "I did not procure the attorney of Allen, West & Bush for any such thing or purpose."

(R. 69.) Int. 24 in the Cottam case, to J. H. Allen:

"Can you solemnly swear that there was no agreement or understanding either before or since you attached T. P. Ware with either T. P. or W. P. Ware, that they or one of them, or their father or brother, were to be in any manner benefited by the levy of your attachment against T. P. Ware? And if you cannot tell us then—what such agreement or understanding was."

Ans., p. 74. "There was no agreement before the attachment."

(R. 80.) "BEN. GERSEN testified for appellees that he had no conversation with W. P. Ware in New Orleans on November 7, 1881, and there was no proposition by him to buy out T. P. Ware.

"JNO. M. ALLEN, for respondent, testified: (R. 81,) that when he arrived in New Orleans on November 9, 1881, "they also informed me of an arrangement they had made with W. P. Ware in reference to an additional $10,000 against T. P. Ware and asked my advice about it which I gave them. They then sent me to Hazlehurst, Mississippi, to confer with Mr. A. Goldthwaite, an attorney they had sent up there from New Orleans to represent them until my arrival, and Mr. W. P. Ware. * * * That the night at Mr. W. P. Ware's house he repeated what Mr. Allen had told him, about their agreement and understanding with W. P. Ware, which was in substance, as follows:"

(P. 81.) "The business conducted by W. P. Ware at Hazlehurst, Miss., in the name of T. P. Ware, was indebted to Allen, West & Bush in the sum of $17,000 or $18,000. T. P. Ware was in a failing condition. W. P. Ware claimed that T. P. Ware owed him ten thousand dollars for money loaned T. P. when he went into business, by W. P., and which was represented by two promissory notes of T. P. to W. P. for $5,000 each, which had been turned over by W. P. to Allen, West & Bush, and that Allen, West & Bush had given W. P. the paper here now sued on, and that it was understood that this ten thousand dollars was to be by Allen, West &

Bush included in their account against T. P. Ware, and that W. P. would have T. P. sell out to Allen, West & Bush, or assign and prefer them, or in some other way have T. P. Ware secure Allen, West & Bush for their debt and this ten thousand dollars, that when this was done that Allen, West & Bush were to pay to W. P. the ten thousand dollars provided they made the money on both claims out of T. P., and that if necessary, T. P. was to abscond and leave the country, but that this arrangement was not to be binding on Allen, West & Bush unless it met my approval, as their attorney, and that if it did not meet my approval it was to be declared off or cancelled. Mr. Ware agreed that this was the contract or understanding between himself and Allen, West & Bush." (R., 82.) That under these circumstances, while I would like very much to accommodate and help him (W. P.) to get his *help*, yet I could not advise Allen, West & Bush to mix their claim up with his in any way, and that he must release them from the agreement. The paper sued on, or a copy of it, had been shown me by Allen, West & Bush in New Orleans. W. P. Ware and myself argued this question some time in his house. He insisting that Judge W. P. Harris, of Jackson, was his attorney, and Judge Harris said they—Allen, West & Bush—could include his claim in theirs and collect it without any trouble, and that Judge Harris was employed by him to help try it. I finally told him that I had great confidence in the judgment and legal ability of Harris, and that his opinion would have very great weight with me, but that I did not think it could be done. He then said he would leave the matter to Judge Harris, and if he did not say it would be safe he would release Allen, West & Bush from the agreement. And it was finally agreed that I should go to Jackson and consult Judge Harris about it, and that we would take whatever course he advised, and that if he advised against it he, W. P., would release Allen, West & Bush from their agreement. When this was determined on, Mr. Goldthwaite went with

me to the depot, and I went on an accommodation freight train, as I now remember, to Jackson. * * * I was in Jackson on the 10th of November, and had a long conference with Judge W. P. Harris about the matter, and he concurred exactly in what I had told Mr. W. P. Ware, and said that while he would like very much to see W. P. Ware get the ten thousand dollars, yet he could not advise Allen, West & Bush to mix their account with that claim; that he thought they would most probably lose it all; and several plans were spoken of or suggested by Judge Harris and myself in trying to devise somes plans by which W. P. Ware could get the money, but finally Judge Harris remarked that he could not see how it could be done; that connected as W. P. Ware and T. P. Ware were taken in connection with the history of their business operations at Hazlehurst, would most probably defeat any conveyance or agreement made to secure a debt due from that business to W. P. Ware, although he said W. P. Ware insisted to him that the debt was due him, but that he was not fertile in his resources for concocting schemes to baffle or defeat creditors, and could devise no plan for W. P. Ware to pursue unless he could sell goods and get the money in hand in the ordinary course of business. I then suggested to him that I must do something to save my claim, and he said yes; he thought Allen, West & Bush had better attach for what was really due them. I then made arrangements to make my bond for an attachment, and returned to Hazlehurst and found the several drummers and lawyers with claims on T. P. Ware threatening attachments and all very uneasy, so much so that I found it almost impossible to have a private interview with W. P. Ware, as all of them seemed to suspect me, and knowing I had a large claim, they all seemed to be afraid I would get in ahead of them in some way. We had several meetings of creditors that day, and finally it was agreed that all the creditors who were present or represented and W. P. Ware would go to New Orleans and see if we could not persuade Allen,

West & Bush to furnish money to pay 33⅓ cents on the dollar on the debts then due and let the creditors extend the balance until spring. I did not have much idea Allen, West & Bush would do it, but I was anxious to get that crowd away from Hazlehurst, and I advised all to go; it was understood that we would go and all preparations made. Mr. W. P. Ware called me into the store that night—for we were to go at night—and told me he was not going. I insisted that he should go and that it was the only chance to get rid of the crowd of creditors present. He said, "No," "they just want to get me away to attach me. The operator told me of various telegrams that had been sent giving instructions about attachments, bonds, &c., and they are now just trying to get me away to attach me."

"I told him what Judge Harris said, or that he agreed with me about the impropriety of Allen, West & Bush attempting to collect the amount claimed to be due him. We then went to another meeting of the creditors. W. P. Ware said he still thought I might save his debt but said something about Mr. J. H. Allen having told him that if it was decided we could not do that, that he, Allen, would rather give him some part of what he recovered on the debt of Allen, West & Bush if W. P. would help save it. At the meeting of creditors that night Mr. Ware informed them that he could not go to New Orleans that night, beeause he did not have his statements ready to make an exhibit to Allen, West & Bush to get the money from them to make the cash payment." That witness with others present insisted that all should go that night, but W. P. Ware said he would go the next night and not before. That this meeting was kept up some time and it was finally agreed that all hands should go to New Orleans. That the next night and just before time for the train to pass going north (Jackson) witness feigned sickness and said he would go to his room, bade them good night, took the train to Jackson and got back before day with his attachments and United States

marshal, and had it levied on the stock of T. P. Ware. That W. P. Ware and T. P. Ware were about the store door (Rec. 84), when the levy was made; it was the first time witness ever saw T. P. Ware. After the levy was made (page 84) W. P. Ware asked me if I attached for his debt too. I told him I did not, and my recollection is that he said if he had known that, he would have had an assignment made the night before, and that he came near doing it any way, but he then spoke again of Mr. J. H. Allen having said that if he did not try to collect his claim that he would rather pay him something to secure his services in helping to collect what was really due Allen, West & Bush.

"(P. 84). Inquiry was made about the T. P. Ware notes, when this suit was brought, and upon looking among his papers, he found the T. P. Ware notes in one of the envelopes (R. 85) that he did not know he had them; he would have returned them to W. P. Ware while at Hazlehurst, when the attachment was sued out if he had known he had them. That he has no recollection of his attention having been called to them since.

"(R. 88 Ans. to X-Int. 2.) My object in going to Hazlehurst that night was to confer with W. P. Ware about the debt of Allen, West & Bush against T. P. Ware and try to secure it in some way—I had not then determined how—and also to inform W. P. Ware that Allen, West & Bush could not undertake the collection of his claim against T. P. Ware, I thought it was probable I would attach, but had not determined what I would do.

"(R. 88, Ans. to ×-Int. 3.) At the conference at Mr. W. P. Ware's house I did not say I would come to Jackson and consult Judge Harris, and determine whether or not it would be safe to carry out the sale; and, if not, that I would attach, according to the agreement between Allen, West & Bush and W. P. Ware. I did say, however, at that conference that I owuld go to Jackson and confer with Judge Harris as to whether Allen, West & Bush could with safety

undertake to collect W. P. Ware's claim with theirs, and that if Judge Harris gave it as his opinion that they could do it without endangering their claim, that I would undertake to do it in such a manner as Judge Harris thought best, although my judgment was against it. I do not know that I can give accurately all that was said between us on the subject, but I can give the substance of what was said. I told Judge Harris about the indebtedness of T. P. Ware to Allen, West & Bush, and that T. P. Ware was about to fail, and W. P. Ware's anxiety to have Allen, West & Bush include an indebtedness of $10,000 claimed to be due him by T. P. Ware to him in their claim against T. P., then for T. P. to sell out to Allen, West & Bush, or assign and prefer them, or have them attach him for the full amount of their claim, and W. P. Ware's included, and in this way save what T. P. Ware owed Allen, West & Bush and W. P. Ware both. And I informed him that Allen, West & Bush had agreed with W. P. Ware to try to save his claim in this way if I thought they could safely do it, and that I had informed both them and W. P. Ware that I did not think they could safely do so, but that W. P. Ware had insisted that they could do it, and we had agreed that I should come and see him (Judge Harris), and be governed by his judgment in the matter, and that if he said they would be safe in attempting to do it, we will try it on whatever plan he suggested.

"(R. 89 to ×-Q. 5.) W. P. Ware made the proposition to abandon his claim against Allen, West & Bush at his house, in his parlor, in the presence of Mr. Alfred Goldthwaite, on the night of the 9th of November, 1881. It came up in this way: I informed him that Mr. Allen had told me that the arrangement between them when the paper sued on in this case was given was to be dependent on my approval of their plan, and I told him that they could not collect his debt, and that the arrangement did not meet my approval, and that if it was undertaken they would lose their whole debt. He argued with

me that they would be safe to undertake the collection of his claim, and said Judge Harris said there was no trouble about it, and after discussing this matter for some time he agreed to leave the matter that was at first to be left to me to Judge W. P. Harris, who, he said, he had employed to help save his debt, and that if Judge Harris said that it was not safe, or if Judge Harris did not say it was safe, he would release them from their promise to do it, and to that I finally agreed, and came to Jackson at his request to see Judge Harris. I do not know of any consideration to him for such abandonment, except the partial fulfilment of a promise he had made to Allen, West & Bush when the paper was executed."

(P. 76–7.) To all of the questions eliciting the foregoing testimony from the witnesses, Reynolds, Goldthwaite, Jno. M. Allen and J. H. Allen, the complainant excepted as irrelevant and incompetent.

"W. P. WARE, complainant in rebuttal, testified that, (R., 94,) that a few days before November 7th, 1881, he received a letter from Allen, West & Bush asking him to come to New Orleans to fix up that matter.

"I supposed that he wanted to make this transfer above spoken of, (agreement of sale held by Judge Mayes,) but before going I went to Jackson to see my attorney, and he advised me that I might sell this claim to Allen, West & Bush straight out, and that they could use it against T. P. Ware, and either by sale or assignment or attachment. He also wrote to Mr. Allen to that effect. I delivered to Mr. Allen Judge Harris' letter; that he was perfectly willing to include this claim in buying out T. P. Ware's business, but refused to pay me anything until after this case was decided. He seemed to think that there might be some trouble in collecting this amount. I then told Mr. Allen that unless he paid me $10,000 for the two notes I held against T. P. Ware that I would return and have T. P. Ware to make a general assignment. He insisted that his claim and my

claim should be paid first, as it was for money and not for goods, and finally said that he would give me a draft on their Mobile house for $10,000, and for me to leave the draft with him, let him send it to Mobile and collect the $10,000, to be held by him until after he got through with the assignment or sale or attachment with T. P. Ware. He instructed his book-keeper, Mr. Reynolds, to draw up a receipt for the $10,000 as though it had been paid to me. Mr. Reynolds did so, and I refused to sign the receipt. He said then that we would have to, each of us, take care of our claims." That he left with this understanding and Allen followed him, overtaking him near Gersons' office, and asked if he intended to make Gerson any proposition. That he told him that he had not decided what steps to take. Allen insisted then that he should go back to his office, and that they had always been friendly, and that he knew they could come to some agreement by which they could both get their money. That he went back with him. Several propositions were made by Allen which he refused to accept. Allen then asked him to state some way of settling the matter, and if he could not accept it the matter would be ended.

"I told him I had but one proposition to make; that was, if he would give me his firms' note payable ninety days after date, provided he was not defeated in the suit against T. P. Ware, that I would transfer the two notes that I held against T. P. Ware to them, and would also assist him in making bond to attach T. P. Ware. He instructed his book-keeper to draw up this note and stated that was all that he wanted. I returned home the same evening with his note, and a few days after a Mr. Goldthwaite came to Hazlehurst, stated that he was a lawyer sent by Mr. Allen to sue out the attachment that was spoken of if the business was in any immediate danger, but if it was not he would wait for Mr. J. M. Allen.

"That at witness' house Allen stated that he knew but very little about the business, and he wanted

witness to tell him all about it, which he did. Allen said that if the business was not in any immediate danger that he would go to Jackson and return the next day, and said that he wanted to see Judge Harris. After he returned he found a great many of T. P. Ware's creditors there (R., 96) talking about attaching the business. Witness and Allen had a talk about delaying in some way, and it was suggested that there should be some proposition made to these creditors by which Allen could go back to Jackson and sue out his attachment. That in pursuance to this, he made a proposition to them, that all the notes and accounts belonging to T. P. Ware were drawn up and to be sent to Allen, West & Bush to borrow money on to pay the creditors 33 and ⅓ cents on the dollar. This proposition was accepted by the creditors and the accounts were taken, finishing just about night. That another meeting of creditors was held to select some to go to New Orleans to consummate the matter. That Allen said that he would not go; that he would go to Jackson to get out his attachment and come back on the first train. That witness told him that he did not like the way things were going on that night, and that if Allen, West & Bush were not going to carry out their agreement to give up his notes, and he would take care of himself. Jno. Allen remarked that the firm was never known to go back on any agreement, or something to that effect. That at the creditors' meeting Jno. Allen excused himself, said that he was unwell, and would go to his room; but by a previous understanding between witness and him, Allen was to go to Jackson and get out his attachment. When he returned, just before day, witness met him at the train and went to the store, where they found the sheriff waiting with another attachment to get in the store. Allen asked witness for the key, he gave it to him or to the marshal. He failed to unlock the door, and they called on witness to unlock it, which he did, opening the door to the right so that the marshal might get in first. That by a previous under

standing, witness was to assume anger towards Alleu, and they had some words which both understood. The next evening Allen, by appointment, met witness at his house and asked him a great many questions about the stock, as to its value, &c. He asked witness where the notes and books could be found (R., 971). Witness told him the books were at the store, and that about $1,600 of the notes were at witness' house, that had been transferred to witness before he went to New Orleans. Allen asked witness to get these notes, which he did, and said to witness that these notes belonged to Allen, West & Bush. That witness gave up these notes, and soon after Allen, West & Bush acknowledged the receipt of them.

"That witness often demanded settlement but could get none. (R., 98.) That the suit referred to in Exhibit A to the bill, was an attachment suit against T. P. Ware by Allen, West & Bush, and that witness was to give the information upon which to base the attachment suit, and that he did give it, and that he was to assist in making the attachment bond, and that this agreement was made before EXHIBIT "*A*" to the bill was executed.

"That J. H. Allen stated that the attachment suit was the best mode to pursue after the proposition was made to settle W. P. Ware's claim. That there was nothing said about Jno. M. Allen or any one else approving the transaction.

"(R., 99.) That Mr. Goldthwaite told witness that his instructions were to see witness, and if the business was in any danger of attachment to get witness to assist him in making a bond and attach for Allen, West & Bush.

"To Int. 17. That he never agreed with Jno. M. Allen that he would leave the whole matter to Judge Harris, and that if Harris said it was unsafe to attempt to collect his claim that he would release Allen, West & Bush from all liability on EXHIBIT 'A.'

"To Int. 18, R., 99. The suit mentioned in Ex-

HIBIT 'A' was brought, and Allen, West & Bush were not defeated.

"To Int. 19, R., 99. That John Allen asked witness to send word to T. P. Ware to be on hand when he run the attachment, and to have T. P. Ware near where the marshal could get the key; that T. P. Ware remained on the street until 4 o'clock a. m., when Allen and the marshal came with the attachment, and witness told Allen that T. P. Ware would be about the door, or the bridge near the door, with the key. As Allen and the marshal and witness got near the store Allen asked for T. P. Ware or the key. Ware came up and handed witness the key, and said afterwards the reason he did not give Allen the key was that he did not know him.

"To Int. 22. That witness had no connection with the business of T. P. Ware, except that he was employed for $125 a month.

"To Int. 23. That in no conversation with Jno. M. Allen did witness ever abandon his claim against Allen, West & Bush on the note EXHIBIT 'A' to the bill. (Rec., 101.)

"To × 108, R., 113. That the suit referred to in EXHIBIT 'A' to the bill was that the firm of Allen, West & Bush was to attach the business of T. P. Ware, and, if not defeated in this suit, they were to pay this $10,000.

"× 109. For what were they to attach T. P. Ware?

"Ans. That matter was left entirely to Allen, West & Bush. (R., 114.)

"×-Int. 110. Then Allen, West & Bush were to be permitted to attach for any amount they saw proper, were they?

"Ans. They were to have judgment for what they attached for, or this note was to be void.

"×-Int. 111. Was that the contract between you and Allen, W. & B., that they were to have judgment for whatever they attached for, or the note was to be void?

"Ans. The note itself was the agreement.

"×-Int. 112. Answer the question.

"Ans. I don't know of any other way to answer it.

"×-Int. 113. Now, I want you to state what the suit referred to in this obligation means, and what was your contract with Allen, W. & B. about what that suit was to be, and whether or not it was understood at the time, in the conversation between you and Allen, W. & B., that, in order to make the note good, they were to have judgment against T. P. Ware for whatever amount they attached him for?

"Ans. As I before stated, during the day that they gave me the obligation or note Mr. Allen made me several propositions. He stated that he had learned through Mr. Cobb, who was a subscriber to Dunn's agency, that T. P. Ware might or would dispose of his stock at any price to satisfy my claim, and that he wanted to fall on some plan to take up my claim against T. P. Ware, and get me to assist him in collecting his. Late in the day I made him a proposition, as before stated, that if he would give me his note, payable in 90 days, that I would give him grounds for attachment against T. P. Ware, and that I would render him any assistance that I could in collecting his claim. He said then that T. P. Ware might defeat his attachment. It was then agreed between him and myself that if T. P. Ware defeated the attachment this note was to be void. It was understood between Allen and myself that if they were defeated in attaching T. P. Ware this note was to be void. Of course this was a matter that I could not control, as it was T. P. Ware's goods that they were to attach, and all that I could do was to give him what I thought was sufficient grounds for attachment. That's the best answer I can give.

"To ×-Int. 114: That he thinks Allen, W. & B. certainly intended to include the $10,000 debt in their attachment against T. P. Ware; that witness gave Mr. Allen the information to sue out an attach-

ment; that the claim of witness had never been put in any statement of T. P. Ware's as a part of his liabilities; that Allen seemed to think that was sufficient grounds for attachment (p. 115), and said that if his attorneys wanted other information they were to apply to witness.."

"×. 125, R. 115. In the interview between you, Mr. Goldthwaite, and J. M. Allen at your house on the night above referred to, did not Mr. Allen and Mr. Goldthwaite both insist that Allen, W. & Bush could not afford to undertake the collection of your claim against T. P. Ware, and did you not say that Judge Harris himself and Judge Mayes both thought that it could be safely done, and did you not insist that J. M. Allen should go to Jackson and consult with Judge Harris about it?"

"Ans. Both Mr. Allen and Mr. Goldthwaite said that they thought it would be a dangerous arrangement, or something to that effect. Mr. Goldthwaite mentioned different ways by which this amount could appear on Allen, W. & Bush's books. One was that a portion of T. P. Ware's cotton, then in the hands of Allen, W. & B., be turned over to some other house, or something of that kind, and that my claim ought to be paid in some way; that it would not appear on Allen, West & Bush's books. Mr. Allen then said that he wanted to go to Jackson and see Judge Harris, and have a talk with him. I think I told him that my money was what I was most interested in."

"×. 126, R. 116. When Mr. Allen returned from Jackson, what did he tell you Judge Harris said about any attempt to collect your claim?"

"Ans. He told me that Judge Harris said that if this $10,000 went on the books of Allen, W. & B., and the other creditors contested his claim, that they might lose the whole thing, and that he had better attach for something less than the whole amount, and, I think, said that a half loaf was better than no loaf at all. He then asked me about the amount of A., W. & B.'s claim against T. P. Ware;

if I thought it was as much as $15,000. I told him I did not think it was, though it might be. He said then, that he would attach for $18,000, and if he got in the first attachment, he was satisfied they could work it out all right, or something of the kind."

"(R. 119.) That Mr. Goldthwaite called on witness to assist him or to know if witness could make the bond. That he told him that he had spoken to J. P. Matthews, who stated that he would make the bond. That witness thinks he said to J. M. Allen, on his arrival, that he could make the bond. His recollection is, that J. M. Allen told him that he preferred to make the bond in Jackson, and to attach the business with the marshal."

To ×. 160. (A. ×. 409.) That he told J. M. Allen in the store in Hazlehurst the night that the attachment was run that if Allen, W. & B. were not going to carry out their agreement, to give up his notes, and he would take care of himself.

To ×-Int. 169. That it was definitely understood when witness left New Orleans that Allen, West & Bush should attach T. P. Ware. (R. 122.)

To ×. 173. That he told James H. Allen in New Orleans, on Nov. 7th, that Judge Harris said that buying witness' claim would be like buying the claim of any other creditor, or something to that effect.

That there was no law preventing them from collecting a claim bought from any other creditors, and that he considered a claim of that kind as legitimate as though the claim had been contracted direct with them.

That he did not say anything more than that about what Judge Harris had said.

That he thinks he told Goldthwaite and Allen in Hazlehurst, about the same thing, and that he has no recollection of telling them that Judge Harris said that Allen, West & Bush would be safe in buying his claim, and including it in theirs and undertaking to collect it either by a purchase from T. P. Ware of his stock, or by any assignment of it for their benefit, or by an attachment against T. P. Ware for their debt, including this amount.

(R., 11–12.) RECORD OF THE JUDGMENT by default for $16,562.86 in favor of Allen, West & Bush against T. P. Ware in the attachment proceedings.

AGREEMENT AS TO EVIDENCE. It was agreed between solicitors in the court below that the court should hear all the evidence, and should only consider the competent evidence, and should decide upon the exceptions to the evidence filed on final hearing. (R., 127.)

(R., 129.) Final decree was rendered, not reciting in the ruling any decree upon the exceptions, but generally dismissing the complainant's bill because not entitled to relief; from which complainant appealed.

(R., 131.) OPINION OF THE HON. R. A. HILL, DISTRICT JUDGE, in the case, by which it appears that all the evidence was considered."

S. S. CALHOUN,
MARCELLUS GREEN,
Sol's for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

W. P. WARE,
vs.
J. H. ALLEN, *et al.* } No. 369.

Brief for Appellant.

POINTS.

1. An attachment in Chancery under the statutes of Mississippi is the exercise of a statutory jurisdiction and its subject may be a strictly legal demand.

Code (Miss.) 1880 § 1832, *Scruggs* vs. *Blair*, 44 *Miss.*, 411.

2. The promissory note EXHIBIT A, to the bill imposed liability absolutely to pay $10,000.00 ninety days after its date, as the answer admitted its execution and delivery and the receipt of the consideration named by the makers; unless the makers, appellees, *averred affirmatively and proved*, that within the ninety days the condition expressed happened, viz: that the suit against T. P. Ware was brought and they were defeated therein.

Warner vs. *Broadus*, 2. J. J. Marsh, Ky., 264;
Cobb vs. ~~*Randall*~~ *Fountain*, 4 Rand., Va., 484;
Yeatman vs. *Broadwell*, 1 La., Ann., 424;
Byles on Bills, 101 *and Note* 1;
Overton vs. *Curd*, 8 Mo., 420;
Cunningham vs. *Morrell*, 10 Johns 203;
Nung vs. *Daniels*, 19 Wal., 560;
Fairfield vs. *Hancock*, 34, Me., 93;
Jones vs. *Jeffries*, 17 Mo., 577;
Hatch vs. *Eyde*, 14 Vermont, 25;
Isaacs vs. *Elkins*, 11 Ver., 679;
Ely vs. *Kilborn*, 5 Denio, 514,
Walker vs. *Crawford*, 56 Ill., 444;
2 Parsons on Notes, 501;
Potter's Dwarris, 119, Note 12;
Gould's Pl., 165–6;
Broom's Legal Maxims, 677–8.

3. When the answer averred that the suit referred to in the *proviso* to EXHIBIT A to the bill "was never brought, but was abandoned under a subsequent agreement," between appellant and appellees, it admitted that the express condition in Ex-

HIBIT A was discharged, and that it was without express condition.

4. The "subsequent agreement" under which, as alleged, the proviso to EXHIBIT A was "abandoned" cannot be considered, because it is an affirmative defense, and there is no averment of its terms or upon what consideration based.

5. There is no proof of any "*subsequent agreement*" by which appellant released any right under EXHIBIT A to the bill; there is only evidence tending to prove that subsequently to the delivery of EXHIBIT A, it was agreed that Judge Harris, instead of J. M. Allen, should decide the question arising on the alleged parol contemporaneous condition, but no other.

6. That the alleged contemporaneous parol condition to EXHIBIT A was not submitted for decision to either J. M. Allen or Judge Harris. W. P. Ware's alleged parol condition was a legal question, viz: whether appellees could legally buy his claim and include in it as a part of the consideration for a preference by an assignment or a sale. The question, if any, submitted to Jno. M. Allen was one of fact, viz: whether appellees would be *safe in trying to collect the W. P. Ware claim as part of their own;* and J. H. Allen instructed J. M. Allen to "exercise his own good judgment in what was best to be done to save our debt as this was the matter for which we were working." (R.* 140.† While the answer does not state what question was submitted to Judge Harris, his reply, and the evidence of J. M. Allen, (R., 88–9) shows it was one of fact; he replied "*under the circumstances* he could not advise respondents to make an attempt to collect the claim of complainant."

* Note. † pages refer to margin of record.

7. The alleged "subsequent agreement" under which, as averred, the suit in the proviso named was "abandoned," could not be the alleged contemporaneous parol condition left to J. M. Allen for decision, whether appellee could legally buy the W. P. Ware claim? nor could it refer to the agreement to substitute Judge Harris' judgment for Allen's. 1st. Because, according to the answer, neither of these agreements had any reference to an abandonment of any suit. 2nd. Because it was only the substitution of the person to determine the question arising on the contemporaneous parol agreement and not subsequent agreement; for J. M. Allen testifies (R., 291), "that he (W. P. Ware) agreed to leave the matter that was at first to be left to me to Judge Harris," and "that he and me had left the matter about the written agreement to Judge Harris." (R. 270.)

8. That EXHIBIT A to the bill cannot be varied or altered by parol proof of any contemporaneous parol condition.

1. Because the condition upon which it was given is expressed on its face, and no other or different condition can be shown by parol evidence.

Thompson vs. *Ins. Co.*, 104 U. S., 259.

2. Because, as averred in the answer, the intent of appellees in executing Exhibit A, and in making said alleged parol condition, was to overreach appellant, and hence they are bound. (R. 13.)

3. Because the alleged parol condition varies the terms of EXHIBIT A, by converting an absolute promise to pay ninety days after date, into one de-

pendent for its taking effect upon the performance of this parol condition precedent.

Myers vs. *Sunderland*, 4 Greene, Iowa, 567 ;
Walker vs. *Crawford*, 56 Ill., 444 ;
Fairfield vs. *Hancock*, 34 Me., 93 ;
12 Me., 466 ; 12 Met., 138 ; 6 Allen, 351 ; 9 Ib., 47 ; 17 Mo., 577 ; 29 Mo., 307 ; 5 Vt., 514 ; 14 Vt., 25 ; 11 Vt., 679; 5 Denio, 514; 2 Par. Notes, 501 ; 8 Mo., 420 ;
Taylor on Ev., Sec. 1132 ;
Thompson vs. *Ins. Co.*, 104 U. S., 259 ;
Bost vs. *Banks*, 101 U. S., 93 ;
Ins. Co. vs. *Mowry*, 96 U. S., 544 ;
Cook vs. *Blackburn*, 58 Miss., 537 ;
Wren vs. *Hoffman*, 41 Miss., 616 ;
Herr vs. *Kuykendall*, 44 Miss , 146 ;
Marsh vs. *McNair*, 99 N. Y., 74 ;
Renner vs. *Banks*, 9 Wheaton, 581 ;
Good vs. *Martin*, 95 U. S., 90.

9. The answer avers specifically only one element of fraud on appellant's part, and that is, that the business of T. P. Ware was really appellant's, carried on in T. P. Ware's name to defraud creditors ; and this is disproven by appellee's letter (R. 109) to W. P. Ware: "We have been called on for copies of every letter received by us from yourself and T. P. Ware and every letter mailed by us since we first commenced doing business with T. P. Ware. In some few letters written by you for your brother T. P. Ware, and in connection with his business, you speak of 'me.' As you were in your brother's employ as clerk, we always understood such expressions to refer to T. P. Ware only."

10. The answer avers that the alleged agreement and EXHIBIT A were a common scheme of fraud between appellant and appellees to defraud the creditors of T. P. Ware; this cannot avail as a defense; for if such fraud existed, appellent can, and has, made out his case, showing a valuable consideration, and without having to prove any fraud, and the appellees cannot defeat that right by averring their own fraud.

"*Nemo allegans suam terpetudinem audiendus sit.*" "*In pari delicto potior est condition possedentis.*"

Fenemore vs. *United States*, 3 Dallas, 364;
Evans vs. *Dravo*, 12 Harris (Pa.) 62;
Brender's Appeal, 92 Pa. St., 246;
Gill vs. *Henry*, 95 Pa. St., 388;
25 Pa. St., 441;
Harris vs. *Harris*, 23 Gratt., 737;
6 Watts, 463;
Stewart vs. *Iglehart*, 7 Gill & J., 132;
6 Serge & Rawle, 521;
14 Pa. St., 18;
3 Watts & Serg., 255;
Xavier Levet vs. *His Creditors*, 22 La. Ann., 105;
Chaffee vs. *Sprague*, 14 R. I., 168;
Dean vs. *Martin*, 24 La. Ann., 105;
Ware vs. *Curry*, 67 Ala., 274;
1 Smith's Leading Cases, 8th Ed., II Pt., top p. 750;
Baldwin vs. *Cawthorn*, 19 Vesey, 166–8;
Simpson vs. *Bloss*, 7 Taunton, 246;
Fizaz vs. *Nichols*, 52 Eng. C. L., 501;
Begil vs. *Phosphat*, 10 L. R. & B. Cas. 500;

Confederate v McClure 3 Gill 9
Springer v Drisch 3 2 Ind. 416
2 Chitty Contracts 1037

Broom's Legal Maxims, 722–7;
Wearse vs. *Pearce*, 24 Pick., 141; 11 Mich. 452
22 Pick., 253; 9 Pick., 93; 4 Rand., 368; 14 Cal., 242;
2 Par. on Contracts, ~~783~~ 279-80
Wilkins vs. *Riley*, 47 Miss. R., 313;
Wooten vs. *Miller*, 7 S. & M., 386.

11. The proof shows that EXHIBIT A was in no way connected with any scheme to defraud creditors, so far as W. P. Ware was concerned.

12. The delivery of EXHIBIT A is admitted. The only pretence is, that, upon certain contemporaneous parol conditions, it was to be "abandoned." Besides, a promissory note cannot be delivered in escrow to the payee.

Byles on Bills, 102; *Babcock* vs. *Stedman*, 1 Root, Conn., 87; 1 Par., Notes and Bills, 51.

13. If the parol agreement was "to release" appellees upon the happening of the contingency, proof of such agreement and the happening of the contingency avails nothing, because the answer admits and the proof shows that, upon the happening of the contingency, and before action to appellant's prejudice, and in disregard of EXHIBIT A, the appellees did not restore the *status quo* by a redelivery of the notes of T. P. Ware received as the consideration of EXHIBIT A.

Jennings vs *Sage*, 13 Ill., 610; 22 Pick., 457.
Coolridge vs. *Brigham*, 1 Met., 550; 21 Me., 122; 36 N. H., 449.

14. Appellees could not defeat EXHIBIT A, as executed, upon condition precedent, without restoring the *status quo*, and the proof shows that immediately after the attachment W. P. Ware delivered to appellees $1,600 of *choses in action* held by him as collateral security for the two T. P. Ware notes, and that appellees claimed them after the attachment, as owners, and collected them in part, and credited such collections to their own account, as owners; and there is no offer to restore these *choses in action* or their proceeds to W. P. Ware.

15. The proof shows that, so far as W. P. Ware was concerned, he carried out the agreement and aided in the attachment, which was to be brought, and that there was no notice given him until after the attachment; that appellees were not in good faith carrying out the agreement with him. And it further shows that, after making the purchase of the notes of W. P. Ware, appellees have sought by every means to defeat their obligation for the purchase price.

16. It is not competent to show that the notes of T. P. Ware, which were the consideration of the promissory note, were themselves without consideration.

Padfield vs. *Padfield*, 68 Ill., 213.

ARGUMENT.

Upon the bill and answer the complainant was entitled to decree. The answer presents no legal defence to the case stated in the bill.

On the law points relied on citation of authority is sufficient.

Point 5

There is no proof of any "subsequent agreement" by which any right under EXHIBIT A was to be released. There is evidence tending to prove that subsequent to the execution of EXHIBIT A the original proposition, which was submitted to J. M. Allen, was to be left to Judge Harris. J. M. Allen testifies (R. 291) "that he (W. P. Ware) agreed to leave the matter, which was at first to be left to me, to Judge Harris." R 270

W. P. Ware testifies that J. M. Allen wanted to consult Judge Harris, and that he never made any such agreement. (R. 325.) 391,

Goldthwaite, who was also appellees' attorney, and who was the only other person present at the interview, says that Allen said that he would go to Jackson and "see Judge Harris, and that he (Allen) would defer to his opinion." (R. 185.) He does not testify that there was any agreement by Ware to leave anything to Judge Harris' decision.

Point 6.

The answer avers that W. P. Ware's proposition was, that "if appellees would pay off his two notes, or agree to do so," he would have T. P. Ware assign and prefer appellees' debt *plus* the amount of his claim, or would have him sell on same consideration, and said his attorneys said such sale or assignment was legal (R. 11), and that appellees "could assume his claim and charge it to T. P. Ware, and

include it in their claim without any risk" (R.X14), and "that if he (J. M. Allen) thought that respondents would not be safe in trying to collect their amount from T. P. Ware by assignment or sale, or that respondents would be endangering their own by it, he, complainant, would then abandon it." (R.X14.)

The answer is silent as to which proposition was submitted, if any, to J. M. Allen, and the reply of Judge Harris shows that it was a question of fact; he said: "*Under the circumstances* he could not advise these respondents to make an attempt to collect the claim of complainant." (RX16.)

The alleged proposition of appellant was, that appellees could, as *a matter of law, buy his two notes, and they could constitute a part of the consideration for a preference by assignment or sale.*

Appellees, outside of the answer, have always contended that *a question of law* was to be submitted. They wrote (R.X156): "We told him we feared it could not be legally done if he (Jno. Allen) and W. P. Harris said we could *legally buy T. P. Ware's notes, and a sale or assignment would hold good in law*, and secure our debt, we were willing to do so."

J. H. Allen testifies, in the case of *Cottam* vs. *T. P. Ware:* "We told W. P. Ware that we were very anxious to save our debt, and if we could *legally buy his claim* and save our whole debt we were willing to do so." (R.X228.)

J. H. Allen testified (R.X131): "W. P. Ware intisted upon our *buying the two* $5,000 *notes of T. P. Ware which he held, and including them in our debt against T. P. Ware, as he said his attorney said it could be legally done.* I was opposed to having any-

thing to do with these notes until I knew it could be *legally done*. W. P. Ware said if it could not be *legally done* he did not desire it to be done at all."

W. P. Ware testifies (R. 308) that his attorney advised him he might sell this claim straight out to appellees, and they could use it against T. P. Ware either by sale, assignment, or attachment. Judge Harris wrote appellees to same effect.

Thus, it is clear, the question W. P. Ware is alleged to have submitted as a condition precedent (in fact, mere colloquium) was a legal question, viz: whether, if appellees bought these notes, they could be legally included in a preference by assignment or sale or attachment.

The answer is silent on the point as to what question was submitted to J. M. Allen or Judge Harris. It avers that after J. M. Allen "was made fully acquainted with all the facts" that "he did not believe the claim could be sustained, and that he was unwilling for respondent to ~~do or~~ endeavor to do anything of the kind." Clearly this judgment involved his judgment on the facts, and that on the facts, as recited to him *ex parte* by the self-constituted proponent, J. H. Allen, "he did not believe the claim could be sustained," and "that he was unwilling for appellees to endeavor to do anything of the kind." The "endeavor" to do something (what we are not informed) by appellees did not meet his approval. Certain, there was no "endeavor" to do anything involved in the alleged question of law. The answer avers that Judge Harris said "*under the circumstances* he could not advise respondents to make an attempt to collect the claim of complainant; that they would be jeopardizing their own claim and

would be in great danger of losing it." What "*circumstances*" were communicated to Judge Harris we are not informed, but certain it is that W. P. Ware never submitted any question of fact to J. M. Allen or Judge Harris for decision; nor was J. H. Allen or J. M. Allen authorized by W. P. Ware to make a statement of facts to either.

Appellees, according to their averment, had agreed that if the purchase or assignment could be legally made, they would make it. All questions of fact had been settled between the parties; appellant had agreed to sell, and appellees had agreed to buy; the value of the consideration was not open for discussion or negotiation.

The evidence shows that the question of law was not submitted, but that J. H. Allen instructed J. M. Allen incompatibly with an invocation of his decision on any question, and made him advocate only. "If it was legal and safe for us to do so, we wanted him to include two notes W. P. Ware had left with us in our claim against T. P. Ware, but we told Jno. M. Allen to exercise his own good judgment in what was best to be done to save our debt, as this was the matter for which we were working." (R. 140.) This, in substance, was that they would like, as an accommodation to W. P. Ware, to include his debt with theirs, but to look alone to the best interests of appellees. Rather incompatible with a solemn contract to buy, and of an alleged solemn agreement to submit a law question to Jno. M. Allen as a judge. In this the proposition advanced is, that appellees should be preferred, not only for their debt, *but also for a debt due to W. P. Ware, and which did not belong to them;* in other

words, to increase their debt by a simulated amount sufficient to cover the amount due to W. P. Ware as an accommodation to W. P. Ware. No wonder "J. M. Allen was unwilling for respondents to endeavor to do anything of the kind." (Ans.)

J. H. Allen testifies further (R.134): "I told him (J. M. Allen) to go to Hazlehurst and see Judge Harris and the Wares, and if it was legal, I wanted him to include the two notes of T. P. Ware, or to buy the stock or have an assignment made, or in some way to secure our debt against T. P. Ware; and also to secure W. P. Ware's $10,000 claim against T. P. Ware, if it could be legally done through us."

Goldthwaite testified that in the interview at Hazlehurst between himself, J. M. Allen and W. P. Ware: "The matter was discussed for some time, but Allen was firm in his opinion that any attempt to save W. P. Ware by amalgamating his claim with Allen, West & Bush's would jeopardize the whole of Allen, West & Bush's claim." (R.185.)

John M. Allen testifies that in New Orleans appellees "informed me of an arrangement they had made with W. P. Ware in reference to an additional $10,000 against T. P. Ware, and asked my advice about it, which I gave him." (R.259.) They informed him that they had made an arrangement for $10,000 additional against T. P. Ware. After this "advice" the instructions are given in New Orleans, "to exercise his own good judgment in what was best to be done to save our debt, as this was the matter for which we were working;" "and also to secure W. P. Ware's $10,000 claim against T. P. Ware, if it could be legally done through us."

Hence, the alleged parol condition precedent is no defense: 1st, because of the matters of law stated, *supra*. 2d, Because the alleged proposition was one of law, and the proposition, if any, that was submitted was one of fact.

It will be noted what conflict there is in the statements of Mr. J. H. Allen as to what the parol condition was. In the answer the parol condition was to be left by him and W. P. Ware to J. M. Allen to decide, and afterwards that W. P. Ware and J. M. Allen agreed to leave it to Judge Harris. *By his instructions to Goldthwaite there is no condition mentioned*, but he is not to take steps "in court" until J. M. Allen arrived unless necessary. By J. H. Allen's deposition in this case, he says: "If his attorney and ours would say:" (R.,✗118) *i. e.*, in New Orleans, W. P. Ware and J. H. Allen agreed to leave it to both.

In 1883, in his letters J. H. Allen states "if our lawyers agreed" (R.✗155), and "if he and Mr. Ware's attorney * * * said, &c." (R.✗156.)

Goldthwaite testifies that J. M. Allen's going to consult Judge Harris was *not prearranged*, and that John Allen did not know he would have to go to Jackson until Ware mentioned Judge Harris' opinion (R.✗195). J. H. Allen testified in the Cottam case in 1882, that he did not procure J. M. Allen to consult Judge Harris (Ans. Int. 12–229), and no mention is made of any agreement to buy on any condition. He said, "but we could do nothing, nor could we make him (W. P. Ware) any promise whatever until we had seen our attorney and had his advice as to whether we could do so legally." (R.,✗228.) That there was no agreement between him and W. P.

Ware before the attachment, that W. P. Ware was to be benefited by the attachment. (R. 234, Int. 23.)

J. M. Allen testifies that J. H. Allen told him it was not binding unless it met his approval. (R. 261.)

W. P. Ware testifies, that there was no condition attached to EXHIBIT A, except what appears therein.

J. M. Allen says, that the same proposition that was left to him was left to Judge Harris, and admits that there was no consideration for the alleged agreement to refer to Judge Harris "except the partial fulfilment of a promise he (Ware) made Allen, West & Bush when the paper was executed." (R. 291).

This conflict, contradiction and contrariety exemplifies the wisdom of the rule excluding parol evidence to vary the terms of a written contract. It is impossible to determine from J. H. Allen's own testimony (and he was the only person present beside W. P. Ware when it is alleged it was made,) whether there was any condition, and, if so, what the nature and terms thereof were.

The averments of the answer further conflict with each other in another important particular in reference to the parol condition. An attempt is made to explain by the answer that the proviso is consistent with the alleged parol condition. It is averred that "the suit" referred to in EXHIBIT A, "was because we were confident if a sale or assignment was made to us, including these notes—it would be attacked and attached by other creditors and respondents would have to defend by suit for the maintenance and recovery of the money claimed to be due in these notes—in a suit in which this amount was to be included." (R. 15.) *i. e.* Allen, West & Bush were *to*

be sued by other creditors and they would have *to defend the suit.* But this allegation is annihilated by the averment of the answer. (R. 18) "that the suit referred to in this paper (Ex. A) was never brought but was abandoned under a subsequent agreement between complainant and these respondents."

By what process the suit to be brought by creditors of T. P. Ware against Allen, West & Bush could be abandoned by agreement between W. P. Ware and Allen, West & Bush, is beyond comprehension.

The written instruments speak in denial of the first proposition of the answer when it says. "Provided we (Allen, West & Bush) are not defeated in the suit against T. P. Ware." Allen, West & Bush are to be *actors* and *against T. P. Ware.* This very conflict of the answer shows that the defense is not meritorious.

The last clause above cited harmonizes with EXHIBIT A in this: That it states that the suit ~~that~~ could be abandoned by subsequent agreement, and this confirms the evidence of W. P. Ware, that the suit referred to in EXHIBIT A was an attachment suit by Allen, West & Bush against T. P. Ware, for only such suit as could be controlled by Allen, West & Bush and W. P. Ware could be the subject-matter of such an agreement to abandon it.

The absence of any reference by the answer to an attachment suit is evidence that such was the agreement; for the whole evidence shows that attachment was one of the prominent methods discussed. As Goldthwaite says, when he left Hazlehurst Allen had gone to consult Judge Harris, "and it was not known

whether there would be an attachment, assignment, or sale." (R. X 197.)

If, as averred in the answer, appellees made the agreement and Exhibit A, to prevent W. P. Ware taking any steps to secure himself, and to use it as a means only to accomplish an end to W. P. Ware's injury and for their advantage, then they would be bound by it.

There is no proof to sustain the averment that the execution of EXHIBIT A was a common scheme to defraud T. P. Ware's creditors. There is an effort to show by W. P. Ware that T. P. Ware did not receive the money stated to be the consideration of the T. P. Ware notes which failed; it is not disputed that T. P. Ware executed the two notes to W. P. Ware, appellees produce them and file them with their answer. The proof shows that J. H. Allen in the transaction did not question the validity of the T. P. Ware notes, but agreed to buy them if he could legally do so.

W. P. Ware testified that T. P. Ware has always recognized the two notes as a valid debt, and there is no proof to the contrary. (R. X 431.)

The facts of the case we submit show that appellees purchased appellants' debt, and that the only condition was that expressed in the writing, and that the suit against T. P. Ware therein referred to was an attachment suit against T. P. Ware by appellees, and that that suit was brought; and that the matters averred in the answer are mere shifts resorted to by appellees to avoid the payment of their obligation; and that W. P. Ware, in good faith, performed his part of the agreement, and that the

appellees attempted to overreach him in the transaction. These reasons support these views :

1. Because, without contradiction, W. P. Ware proves that it was always understood between him and appellees that if they consummated the covenant to sell, executed by T. P. Ware in July, 1881, that his debt was to be paid him. (RX406.)

2. Upon notice to come to New Orleans, appellant had a form of bill of sale drawn up, including his debt, by Judge Harris, and a letter stating that it was legal. (R. 308, 138, 133.)

4. The negotiations lasted all day between appellant and appellees before EXHIBIT A was executed, *and this form of bill of sale was not adopted.*

5. J. H. Allen tendered W. P. Ware, in New Orleans, a receipt for the two notes, which he refused. (RX61.) After further conference, J. H. Allen dictated to his bookkeeper, and he wrote EXHIBIT A to the bill, which was accepted, and it is proven that EXHIBIT A was to evidence W. P. Ware's proposition.

6. It was stated by J. H. Allen to W. P. Ware, "that if our attorney and his agreed upon it we would do so (*i. e.*, buy the notes), and would have the money placed to his credit with our house in Mobile ; for he told us if our attorney and his recommended it, and the money was placed to his credit here, his old creditors would attach it." (RX132.)

W. P. Ware testifies that in the colloquium as to what course was best to pursue it was suggested by J. H. Allen that he would give him a draft to be left with him to collect, and he to hold the money until he got through with the assignment, sale, or attach-

ment with T. P. Ware (RX309), thus conclusively showing that it was *a purchase of the notes by Allen that was made*, and the debate was upon the form the transaction was to take until the suit against T. P. Ware could be decided; and we say it finally assumed the form of *Exhibit A, because an attachment suit was determined on.*

7. W. P. Ware testifies that it was an attachment suit referred to in *Exhibit A.*

8. The instructions of J. H. Allen to Goldthwaite when he went to Hazlehurst were, that "I was not to take any steps *in court until J. M. Allen could reach Hazlehurst*" (RX182); and when he left Hazlehurst John Allen was in Jackson, "and it was not known whether there would be an attachment, assignment or sale." (RX197.)

(This was after the interview at W. P. Ware's house.)

9. Goldthwaite, in reciting the conversation at W. P. Ware's house, speaks of the matters as if the arrangement was that appellees were to include the debt of appellant with theirs. "He had gotten some kind of a paper from Allen, West & Bush, when in New Orleans, that gave him *some hope* that they would help him. I never saw the paper, though I may have seen a copy of it." (RX184.) It was this witness who, when J. H. Allen showed him, in New Orleans, when he first consulted, the copy of EXHIBIT A, advised him to get it from W. P. Ware (RX7 R., 60), as "it was unnecessary" and "might give trouble."

10. Jno. M. Allen, when in Jackson, on the day of the interview with Judge Harris, prepared *to attach*, and secured bondsmen for attachment (R.,

265), and returned to Hazlehurst. (Note.—Up to this time John Allen had no knowledge of any ground of attachment, except what W. P. Ware had told J. H. Allen, nor has he afterwards any other information, so far as the record shows.)

11. John M. Allen testifies that, upon his return to Hazlehurst, "I told him (W. P. Ware) what Judge Harris said, or that he agreed with me about the impropriety of Allen, West & Bush attempting to collect the amount claimed to be due him." (R., 267.) (Note.—This was all he says he told W. P. Ware. That he did not tell W. P. Ware that the agreement was at an end before the attachment is manifest, because John Allen says: "After the levy was made W. P. Ware asked me if I had attached for his debt, too. I told him I did not.") (R., 268.)

12. T. P. Ware, in pursuance of the agreement between W. P. Ware and John Allen, remained on the streets of Hazlehurst all night, so as to be present to afford facilities for Allen to levy his attachment when he returned with the marshal, and he was present and furnished the key, though Jno. Allen denies this. On November 15th, 1881, appellees write to T. P. Ware, suggesting that other parties may be after his notes and accounts, and asking if it would not be well for their agent to come at once to Hazlehurst and garnishee every one, "and thus greatly facilitate matters." (R. 92.)

13. W. P. Ware played a part all day and had creditors' meetings for simulated purposes, in order to delay matters and give John Allen a chance to get back to Jackson and return with his writ of attachment; and he aided in getting the first levy for

Allen, West & Bush by unlocking the door and letting the marshal in first. (R., 312-6; R., 266.)

14. Though Allen was in Hazlehurst all day between his interview with Judge Harris and the attachment, and they were acting together, he did not communicate to W. P. Ware that he did not intend to carry out the alleged agreement, nor did he ask for a release from EXHIBIT A, nor did he offer to return the notes of T. P. Ware. W. P. Ware testifies, without contradiction, that, on the night of the attachment, "I told him (Allen) I did not like the way things were going on that night, and if they were not going to carry out their agreement with me, to give me up my notes and I would take care of myself." "Mr. John Allen remarked that the firm of Allen, West & Bush were never known to go back on any agreement" (R., 313); that then they went to the simulated creditors' meeting, from which, by agreement, Jno. Allen was to retire as sick, and go to Jackson and get out the attachment. When the levy should be made, to allay any suspicions of collusion, it was agreed that W. P. Ware and John M. Allen should have simulated angry words. (R., 315, 294.)

15. The day after the attachment John M. Allen went to W. P. Ware's house to ascertain where T. P. Ware's books were, (R., 296) and W. P. Ware at Allen's request turned over to him about $1,500, of notes (R., × 297, × 316, × 89,) that he held as collateral security to the T. P. Ware notes; because, as W. P. Ware says, he thought they belonged to them as owners of the notes; Allen, West & Bush notified at least some of them by letter (R., × 98) that they were the owners of these notes; and they collected

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a large amount on these notes and these collections were passed to the credit of their agent, Joe Brooks Allen, who continued the business of Allen, West & Bush, after their purchase of the stock of goods; and after this bill was filed they credited such collections to the debt of T. P. Ware; but they never returned or offered to return these proceeds to W. P. Ware, and they after the attachment, ~~made~~ wrote on Nov. 15th, 1881, to T. P. Ware that their agent had better be furnished with a list of his *choses in action* so as to garnish them and keep other creditors from molesting them and keep other creditors from molesting them and "thus facilitate matters."

W. P. Ware testifies, that repeatedly since the attachment he has demanded a settlement of EXHIBIT A. But it has been, from one cause or another deferred. Appellees, as late as Jan'y 26, 1883, just before the suit was brought, referred to John M. Allen for information as to whether they owed EXHIBIT A. (R., 154.)

16. The facts that the two notes of T. P. Ware, the consideration was not tendered back, nor the money received from the collaterals thereto received from W. P. Ware; and the conflict between answer verified by J. H. Allen and signed by John M. Allen solicitor, who had the notes, viz: "and the fact that the notes were not given back to complainant was not known for some time after by these respondents, the notes having been given to their said attorney, who said they were by mistake mislaid and not known by him to be in his possession," (R. 16.) And the evidence of J. H. Allen, "and soon after our attachment we instructed our attorney, Jno. M. Allen, to turn them (T. P. Ware's notes) over to W. P. Ware, and take up the paper which is the basis of

this suit (R. X 120), are strong circumstantial evidence to show that appellees have always known that they were liable on these notes, and especially so when, in their answer now, they offer to return them qualifiedly, *i. e.*, "by order of court," which is no tender at all. The order of court is not their volition.

17. The debate between W. P. Ware, J. M. Allen and Goldthwaite on the best course for Allen, West & Bush to pursue, whether sale, assignment or attachment, and a reference of this question to Judge Harris, if such was the fact, would not prove that J. H. Allen and W. P. Ware had not agreed on an attachment in New Orleans; it would only indicate that Allen's attorneys were not of the same opinion as J. H. Allen; and W. P. Ware's participation, by expressing his legal opinion, could affect no right of his, as it was a matter of indifference to him what course they pursued; they had bought his paper, and if they pursued either course it would be acceptable to him. As W. P. Ware says, he was most interested in his money. (R. X 391.)

18. The amount for which the attachment was issued was $18,000 (R. X 142), and was largely in excess of what T. P. Ware owed appellees; it was issued Nov. 12, 1881, and on May 29, 1882, the amount T. P. Ware owed appellees was $16,562.86, as shown by the judgment in attachment suit. J. M. Allen testifies that Goldthwaite gave him the statement of T. P. Ware's account at Hazlehurst before he left. (R. X 271.) W. P. Ware testified that on Nov. 11th J. M. Allen asked him how much T. P. Ware owed appellees; if he thought it was $15,000. That witness told him that he did not think it was quite that much. "He (J. M. Allen) said then he would attach

for $18,000; if he got in the first attachment he was satisfied they could work it out all right, or something of that kind." (R. 392.) Such excess with the statement of account in his possession is strong evidence that he was doing more than attaching for his debt, and corroborates W. P. Ware when he says that J. M. Allen said that he would attach for $18,000, and "they could work it out all right."

19. There is no proof that prior to attaching appellees ever notified W P. Ware that they would not execute the agreement.

20. The failure to notify W. P. Ware of an intention to abandon EXHIBIT A, and the reception by appellees of the aid of W. P. Ware, and the failure to restore to W. P. Ware his two notes before the attachment, and the reception of the collateral notes to the T. P. Ware notes from W. P. Ware, after the attachment, and the letter of Nov. 15th, 1881, desiring to facilitate matters by having their agent furnished with a list of choses in action so that he might garnish them "and thus facilitate matters," are compatible with but two facts; the first, that they were executing the agreement by attaching; or, the second, that they were availing of the agreement with W. P. Ware to prevent his doing anything to save himself to get an opportunity to secure their debt, in fraud of W. P. Ware's rights—in either case appellees would be bound by EXHIBIT "A."

Therefore the decree should be reversed and cause remanded with directions to enter a decree in accordance with the prayer of the bill against all of the appellees personally for the full amount of EXHIBIT

A, with interest, and an appropriation of the funds in the hands of the garnishees towards its payment and for execution for the balance.

S. S. CALHOUN,
MARCELLUS GREEN,
Sols. for Appellant.

Office Supreme Court U. S.
FILED.
NOV 27 1888
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

W. P. WARE, *Appellant*,

vs.

J. H. ALLEN *et al.*, *Appellees.*

No. 99.

MARCELLUS GREEN,
CALDERON CARLISLE,
For Appellant.

R. O. POLKINHORN, PRINTER,

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

W. P. WARE, *Appellant*,
vs.
J. H. ALLEN *et al.*, *Appellees.*
No. 99.

Statement.

This was a proceeding instituted in the Chancery Court of Copiah County, Mississippi, under Sections 1832 and 1898 of the Code of Mississippi, 1880, providing for attachment in Chancery to subject certain equitable assets of the appellees, namely, debts due to them, to the payment of appellant's claim against them founded upon the written instrument set out on page two of the record, which is in the following words and figures:

"NEW ORLEANS, *Nov. 7th*, 1881.

Ninety days after date we promise to pay W. P. Ware or order, ten thousand dollars for two notes of T. P. Ware for five thousand dollars each, dated August 21, '81, one on demand & one at 30 d'ys, pro'ided we are not defeated in the suit against T. P. Ware; if so, this note is void.

Yours truly,

ALLEN, WEST & BUSH."

The local debtors of Allen, Bush West & answered, admitting their indebtedness, and paid their money into Court.

If the appellees, who were non-residents, had not voluntarily appeared, the only relief which appellant could have had under his bill would have been an application of the equitable assets to the payment of his debt. But when the appellees came in, submiting to the jurisdiction of the court and setting up equitable defenses and denying all liability, the court acquired jurisdiction to make a decree *in personam* against appellees.

Defendants Allen, West and Bush filed a joint answer in the State court, which, however, was only sworn to by one of them, James H. Allen, and thereupon the bill was taken for confessed, against West and Bush (Rec. p. 19). Most of the testimony was taken and the cause proceeded in the State court until January 5th, 1884, when defendants petitioned for removal to the Circuit Court of the United States. The order of the State court for removal was filed in the Circuit Court on May 16th, 1884, and on the same day that court passed an order limiting time for further testimony. No new pleadings were filed in the Federal court, some further testimony was taken, and the cause was submitted under the following stipulation, found on page 127 of the Record.

Agreement of Counsel.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

W. P. WARE,
vs.
ALLEN, WEST and BUSH *et al.*

It is hereby agreed that the court shall hear all the evidence herein, and shall consider only the competent evidence, and shall decide upon the exceptions already filed on final hearing.

JOHN M. ALLEN,
for Def'ts.
CALHOON & GREEN,
Sols. for Comp'lts.

Complainant alleges the making and delivery by defendants of the written agreement set out (Rec., p. 2, "Ex. A,"), and delivery to and acceptance by defendants of the consideration (the two notes of T. P. Ware for $5,000 each), and that defendants were not defeated in the suit against T. P. Ware.

Defendants, in their answer, admit the execution and delivery of the said agreement and the receipt and retention, by them, of the consideration (Rec., pp. 4 and 6), but set up three defenses to complainant's demand: (1) that the condition upon which the agreement to pay the $10,000 was to be void, was not as therein written, "provided we are not defeated in the suit against T. P. Ware," but was provided one John M. Allen thought defendants would not be safe in trying to collect their amount from T. P. Ware by sale or assignment, or that defendants would be endangering their own debt by so doing, he complainant, would then abandon it (Rec., p. 6); (2) that the consideration for the agreement had failed as the T. P. Ware notes were fictitious, represented a simulated debt, and were part of a common scheme of fraud between complainant and defendants to prejudice the rights of other creditors of T. P. Ware (Rec., p. 6, Marg., p. 17); and (3) that the

suit referred to in said agreement was never brought, but was abandoned by a subsequent agreement between complainant and defendants. (Rec., p. 7.)

It is submitted that no one of these defenses can be maintained (*a*) because they are not legally admissible as defenses in this cause, and (*b*) because they are not sustained by the proof.

I.

As to the condition upon which this agreement was to become void.

a.

This defense is wholly inadmissible as a matter of law.

The condition stipulated in the written agreement is plain and unequivocal: "*Provided we are not defeated in the suit against T. P. Ware.*" This note was not written by complainant, but by defendants' clerk, Reynolds (Rec., 21), and was the result of a discussion between complainant and defendant, J. H. Allen, in which a different paper had been offered, and after W. P. Ware "made objections to same to J. H. Allen" (Reynolds, Rec., p. 21), and Reynolds further testifies (Rec., p. 22); that it was according to an arrangement between Ware and J. H. Allen, and that he "wrote it according to directions of J. H. Allen" (10th Cross-question, Rec., 22).

It is therefore conclusively shown, for Reynolds is in no way contradicted or impeached, that this instrument was deliberately prepared by the defendant, J. H. Allen, after nearly a day's conference with Ware, and that the form in which it now

appears is the form which said defendant took to express his views of the agreement at which the parties had arrived. Defendant Allen confirms this account of the preparation of the paper, except that he says it was "hurriedly written." (Rec., p. 39.) But it appears from Goldthwaite's evidence (Rec., 60, Marg. p. 87); that sufficient deliberation was used in its preparation to *keep a copy* of the agreement which was shown him by defendant Allen. The purpose of this defense by parol proof is to vary, contradict, qualify and add to the terms of the written instrument. The condition of the note expressed is defeat in a suit; the condition alleged and intended to be proved is the opinion of an attorney as to the safety of a given transaction; a given mode of procedure. The rule against the admission of such testimony is too well settled and too well understood to admit of argument, and, as has been said in a late decision, "cannot now be considered an open one in this court."

Martin vs. *Cole*, 104 U. S., 39;
Bank vs. *Dunn*, 6 Pet., 51;
Brown vs. *Wiley*, 20 How., 442;
Bank vs. *Jones*, 8 Pet., 12;
Forsythe vs. *Kimball*, 91 U. S., 291;
Bast vs. *Bank*, 101 U. S., 96, 97;
Ins. Co. vs. *Mowrey*, 96 U. S., 547.

The same rule prevails in the State of Mississippi where this cause was tried.

Brantley vs. *Carter*, 4 Cush., 285;
Wren vs. *Hoffman*, 41 Miss., 619;
Powell vs. *Jones*, 12 S. & M., 507, 508;
McGuire vs. *Stevens*, 42 Miss., 731;
Elis vs. *Kelley*, 4 George, 696, 698.

And also, by express statute in Louisiana, where this contract was made: "Neither shall parol evidence be admitted against or beyond what is contained in the acts, nor on what may have been said before, or at the time of making them or since."

Civil Code La., (1875), sec. 2276.

The fact that this was a suit in equity does not vary the rule, for, as has been said by this court, "in the absence of fraud, accident or mistake, the rule is the same in equity as at law."

Forsythe vs. *Kimball*, 91 U. S., 264;
Martin vs. *Cole*, 104 U. S., 34.

(*b.*)

But even if this defense were one legally proper to be made, it is not sustained by the proof.

In the first place, the proof is not *secundum allegata*. The averment is that if J. M. Allen "thought respondents would not be safe in trying to collect their amount from T. P. Ware by sale or assignment, or that respondents would be endangering their own by it, he, complainant would then abandon it."

The testimony offered under this defense furnishes a striking illustration of the wisdom of the rule above referred to, and of the propriety of its application to the present case. The door having been thrown open to parol testimony to prove this *alleged* condition against the *written* one in the note, we have the following results:

The defendant, James H. Allen, testifies, (Rec., 29, Marg., pp. 118, 119), that if *complainant's and defendants' attorneys* agreed that they could *legally*

include and collect these Ware notes, they would do so; otherwise, defendants' note to be void.

Again, (Rec., 39, Marg., p. 119), that this note was to be void unless they could include the two notes in the Ware debt, and collect them.

Still another account is given by him in answer to the 7th int. (Rec., 40, Marg., p. 122), namely: "If we could *legally* hold them, and collect them by sale or assignment or any other way, then we were to pay him." And again, same page, that unless the *two attorneys* agreed that the notes were *legal*, and they could *in law* hold and collect them *as part of their debt*, and, if so included, were not "thrown out by the court as illegal," the note sued on was to be void.

To the 11th int. (Rec., 40, Marg., p. 124), he says, that no claim was to be made "unless his lawyers and ours agreed that these two notes *be included and collected in our debt.*"

He told John M. Allen, (Rec., 43, Marg., p. 134), to secure, "*in some way,*" defendants' claim, and also W. P. Ware's $10,000, if it could be *legally* done through defendants. He also told him, (Rec., 45, Marg., p. 140), if it was *legal and safe* he wanted the Ware notes included in defendants' debts.

In another attempt to state the terms of this agreement (Rec. 48, marg., p. 151,) he says the note was to be void unless the two attorneys agreed to charge it to Ware's debt and collect it

And in his letter of January 26, '83, (Rec. 49), he says it was to be void unless T. P. Ware made an assignment or sold out to defendants, and the courts sustained such assignment or sale.

And also, by express statute in Louisiana, where this contract was made: "Neither shall parol evidence be admitted against or beyond what is contained in the acts, nor on what may have been said before, or at the time of making them or since."

Civil Code La., (1875), sec. 2276.

The fact that this was a suit in equity does not vary the rule, for, as has been said by this court, "in the absence of fraud, accident or mistake, the rule is the same in equity as at law."

Forsythe vs. *Kimball*, 91 U. S., 264;
Martin vs. *Cole*, 104 U. S., 34.

(*b.*)

But even if this defense were one legally proper to be made, it is not sustained by the proof.

In the first place, the proof is not *secundum allegata*. The averment is that if J. M. Allen "thought respondents would not be safe in trying to collect their amount from T. P. Ware by sale or assignment, or that respondents would be endangering their own by it, he, complainant would then abandon it."

The testimony offered under this defense furnishes a striking illustration of the wisdom of the rule above referred to, and of the propriety of its application to the present case. The door having been thrown open to parol testimony to prove this *alleged* condition against the *written* one in the note, we have the following results:

The defendant, James H. Allen, testifies, (Rec., 29, Marg., pp. 118, 119), that if *complainant's and defendants' attorneys* agreed that they could *legally*

include and collect these Ware notes, they would do so; otherwise, defendants' note to be void.

Again, (Rec., 39, Marg., p. 119), that this note was to be void unless they could include the two notes in the Ware debt, and collect them.

Still another account is given by him in answer to the 7th int. (Rec., 40, Marg., p. 122), namely: "If we could *legally* hold them, and collect them by sale or assignment or any other way, then we were to pay him." And again, same page, that unless the *two attorneys* agreed that the notes were *legal*, and they could *in law* hold and collect them *as part of their debt*, and, if so included, were not "thrown out by the court as illegal," the note sued on was to be void.

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And in his letter of January 26, '83, (Rec. 49), he says it was to be void unless T. P. Ware made an assignment or sold out to defendants, and the courts sustained such assignment or sale.

Then again in letter of Febuary 13, '83, to Calhoon & Green (Rec. 50, marg., p. 156.) he says that if the counsel for the parties "did not *approve*" the assignment and sale, the note was to be void.

In view of these wavering and uncertain and inconsistent statements of Mr. Allen, it seems to us that it does him no injustice to say that it would not be "legal and safe" for the court to disregard the plain written agreement, and to endeavor to arrive at the true one by a reliance upon his testimony. If parol testimony is ever to be accepted in such a case, it is the least that can be required of it that it be absolutely clear, certain and consistent.

It is not *secundum allegata*, for the answer alleges as the condition that the validity of this $10,000 note, was to rest upon the opinion of John M. Allen alone as to the *safety* of defendants attempting to collect the T. P. Ware notes.

Among all the variant statements of Mr. James H. Allen, above referred to, not one will meet that case.

But if this objection be unavailing, the defendants have not discharged their burden of proof by a preponderance of testimony. Complainant, Ware, swears positively and distinctly to the agreement having been in fact as Allen had it written, (Rec. 95, marg., p. 310), Allen admits that the arrangement was made privately between himself and Ware, (Rec. 42, marg., p. 130), so that there is a mere balance of oath against oath, with the written instrument, prepared by Allen himself, (Rec., 22, marg. p. 64), supporting complainant, together with the fact that the agreement, as finally written, was the result of a day's discussion, and made after a previous and

different one had been *tendered and refused.* (Rec. 21, marg. p. 62).

The testimony of James H. Allen is also in striking contrast with this contention, for he says: "W. P. Ware said that he wanted some document *to show our agreement.*" * * * "We first gave him a receipt for the two notes," * * * but "he said that *was not satisfactory*, as we *made no promise* in that, in case our attorney and his agreed to include his claim in our account against T. P. Ware. We then hurriedly wrote the other paper, as it was near train time, which is the basis of this suit." (Rec., 39, marg. pp. 118, 119.) So that, when writing a document "to show *our* agreement," did he write the one here contended for; provided "our attorney and his agreed to include his claim in our account against T. P. Ware?" No. On the contrary, he wrote what complainant says was "our agreement," "*provided we are not defeated in the suit against T. P. Ware.*" Could two propositions be more dissimilar, more foreign to each other? Is it possible to believe that J. H. Allen thought, after all this discussion, that the language he himself thus employed expressed the idea for which he now contends? And is this proof not directly within the rulings of this Court in *Thompson* vs. *Ins. Co.*, 104 U. S., 253, 254, 259?

Attempt is made to corroborate Mr. James H. Allen by the evidence of Mr. John M. Allen, his brother, and the solicitor for defendants. Mr. John M. Allen says he told Ware of the agreement as understood by J. H. Allen, namely: that the note was to be paid, provided these notes were included

in their claim against T. P. Ware, and provided, also, (an entirely new condition, not claimed in the answer nor by J. H Allen in his testimony,) that they *made the money on both claims*, (Rec. 81, marg., p. 260), but this arrangement was not to be binding unless it met his, John M. Allen's, approval, (*Ib.* marg., p. 261.) To this, he says, Mr. Ware assented. (*Ib.*)

But we submit that there are two very good reasons why this must prove insufficient. *First*, it is plain from his testimony that the matter under consideration at his interview with complainant was not the nature and binding force of defendant's contract with complainant, but the question of ways and means of proceeding to collect the whole debt. *Secondly*, Mr. John M. Allen says (Rec., 82; marg., pp. 262, 263), that they discussed the plan of uniting the two claims, Ware insisting that Judge Harris had said such a scheme would be legal. Ware then agreed to leave the matter to Judge Harris, and if he did not think it safe, or if he advised against it, Ware "would *release* Allen, West & Bush from *their agreement.*" (Rec. 82, marg. p. 268.) How was he to "release" if there was no agreement? What was there to be "released" which was so important that Mr. Allen took "an accommodation freight train some time between midnight and day" to confer with Judge Harris if his (Allen's) disapproval had, by Ware's own admission and the understanding of the defendants and Allen already operated as an absolute abrogation of the agreement, if it was thereby "off or cancelled?"

It is plain truth, though not discrediting to Mr.

John M. Allen, to say that he is manifestly mistaken in his testimony. The present issue in this cause was not then before them. Defendants' chances of collecting nearly $20,000 from T. P. Ware in advance of other creditors was the all-absorbing question. It is a matter of no surprise that he should have confused his understandings with his brother's firm and those with Mr. Ware in the manner he has so obviously done.

II.

As to the failure of consideration.

(*a.*)

The inadmissibility of this defense is fully presented in the brief on file. (Brief, pp. 38–44.)

(*b.*)

Upon no just view of the record can this defense be considered as sustained by the proofs.

That the two $5,000 notes are the genuine notes of T. P. Ware, is not denied either in the pleadings or proofs.

The genuineness of these notes being admitted and the notes being endorsed over to defendants generally, (Rec., p. 7), they are *prima facie* evidence of consideration, and the burden is, by the well settled principles of law, upon defendants seeking to impeach them to do so by a preponderance of testimony.

How have the defendants endeavored to discharge this burden? The only evidence adduced on that point is that of the complainant who swears positively that the notes represented loans by him to T. P. Ware. (Rec., 103, Int. 26, and Rec., pp. 104 and

105, Ints. 37 and 42, and Rec., p. 126.) It will be observed that this inquiry is all by way of cross-examination, and brought out by defendants, is in no respect germane to his examination-in chief, and the defendants are bound by his answer.

It is nowhere alleged that T. P. Ware ever denied the validity of this debt, nor is any attempt made to prove that it was uncollectible. On the contrary, defendants admit that they never tested the validity of these notes by any attempt to collect them. (Rec., pp. 7 and 39.) They contented themselves with holding the notes from November 7th, 1881, (Rec., p. 49), the time of the delivery to them until May 9th, 1883, when their answer was filed (Rec., 7), without any action in respect to them. When called upon to pay their note and when they set up their reason for refusal, they never intimated a doubt as to the validity of these notes; on the contrary, they assign an entirely different reason in their letter of January 26, 1883, (Rec., p. 49), to Ware, and in their letter of February 13, 1883, (Rec., p. 49), to Calhoon and Green, though they say: "We make this full explanation to you," (Rec., p. 50), no allusion is made to any supposed invalidity in these notes.

John M. Allen in his testimony (Rec., 82, 83), does not intimate that he then doubted the validity of these notes, on the contrary, he expressed a wish "to accommodate and help him" (W. P. Ware), and the relationship between the Wares was then considered simply as a practical difficulty, and not treated as suspicious (Rec., p. 82.) In view of these facts, is it too much to say, that this defense is an after thought and a "catching at straws?"

Attempt is made to discredit the complainant, and to cast suspicion upon his testimony and the *bona fides* of his transaction with T. P. Ware. But it is a well established rule that where fraud is charged it must be clearly proved, and that mere suspicion is not enough to shift the burden of proof from him who charges it.

III.

The third defense relied upon is that the agreement was abandoned.

a.

This defense like that of the alleged different conditions upon which the note was based is wholly inadmissible. It simply asserts that the written agreement has been abrogated by a parol one. It is distinctly within the prohibition marked out in the authorities upon this point cited, *supra.*

b.

Nor is it sustained by the proofs. Mr. John M. Allen would seem to indicate such an agreement in his testimony, but it has for its basis the idea of *illegality* in executing the agreement as made, whereas the fact is that the effort to make the Ware notes was abandoned, not because of any illegality in complainants sale of them to defendant, but because he believed it to be inexpedient. In addition to this, complainant positively denies any such agreement, so that the burden of proof has not been discharged. Some effort is made to give color to this contention by reference to the conduct of Ware in not demanding immediate payment of this note.

105, Ints. 37 and 42, and Rec., p. 126.) It will be observed that this inquiry is all by way of cross-examination, and brought out by defendants, is in no respect germane to his examination-in chief, and the defendants are bound by his answer.

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Whatever view may be taken of Ware's motive, his answer to this is quite logical and satisfactory. He feared to publish his demand to the world, lest attaching creditors should seize upon it.

But beyond all this, had the agreement to abandon his claim been made, were it admissible to prove that fact, of what avail as a defense can it be here? It is not alleged nor proved that Ware received any consideration for such new agreement, and John M. Allen, the only witness to testify to such agreement, and defendants' witness, says:

"I do not know of any consideration to him for such abandonment, except the partial fulfilment of a promise he had made Allen, West & Bush, when the paper was executed." (Rec., 90, Marg., p. 291).

This is pleading a mere *nudum pactum.*

If he "abandoned," there must have been something to abandon. If he received no consideration for such abandonment, no rule of law denies him the privilege of returning to his rights.

But the record seems to contain clear proof to the contrary, for Ware testifies to the defendants' recognition of his claim (Rec., p. 97, marg., p. 317), the defendants admit that they kept his notes, and they still have them in their possession, and do not claim to have offered to return them until after they had secured themselves through the attachment. (Rec., p. 39, Marg., p. 120.)

Why did they accept and apply to their own use, as they admit doing, (Rec., p. 46, marg., p. 144), the notes held by complainant as collateral security for the two $5,000 notes if their contract for the pur-

chase of these notes was abandoned before the attachment? Why did they attempt, after the attachment, as shown by their letter of Nov. 15, 1881, (Rec., 30, marg., p. 92), to buy up the other claims against T. P. Ware at 25 per cent? And does not said letter corroborate complainant's testimony on the same point (Rec., 97, marg., pp. 316, 317.) And though Goldthwaite is said to have been present at the time of the alleged subsequent agreement (Rec., p. 89, marg., p. 290), he is not interrogated upon that point when put on the stand as a witness for defendants.

MARCELLUS GREEN,
CALDERON CARLISLE,
For Appellant.

Postscript.

Although no question has been made in the court below, or in this court by appellees as to the jurisdiction of the Circuit Court to entertain this bill, it seems not improper to add that the Mississippi Statute, under which this suit is brought, is clearly such an enlargement of equitable rights and remedies as will be administered by the Circuit Courts of the United States.

Clarke vs. *Smith*, 13 Pet., 195–203;
Broderick's will, 21 Wall., 503, 519, 520;
Van Norden vs. *Morton*, 99 U. S., 378–380;
Cummings vs. *Bank*, 101 U. S., 153–157;
Holland vs. *Challen*, 110 U. S., 15;
Reynolds vs. *Crawfordsville*, 112 U. S., 405;
Chapman vs. *Brewer*, 114 U. S., 170–171.

Section 1831 of the Mississippi Code (1880), immediately preceding that providing for attachment in chancery, is exactly similar to the State statute giving jurisdiction in equity to restrain the collection of an illegal tax, which this court has held can be administered on the equity side of the Circuit Court.

Cummings vs. *Bank*, 101 U. S. 153–157.

Section 1833, immediately following the section under which this suit is brought, gives jurisdiction to entertain the bill to remove a cloud on title by the real owner, "whether such real owner be in possession or be threatened to be disturbed in his possession or not."

A statute exactly similar has been held to give jurisdiction in equity, to the Circuit Court, in various cases, notably in *Holland* vs. *Challen*, 110 U. S., 15.

The material parts of the sections providing for the attachment in chancery are as follows:

SECTION 1832. The Chancery Court shall have jurisdiction of attachment suits against any non resident * * * debtor, and persons in this State who have in their hands effects of or are indebted to such non resident * * debtor." (page 59.)

"Attachment in Chancery"

* * * * * *

"SECTION 1898. When a bill shall be filed for an attachment of the effects of a non resident * * * debtor, or of the indebtedness of the defendant in this State to such non resident * * * defendant, and it shall be sufficient to find * * such indebtedness, that the summons for the defendants, resident in this State, shall have stated in or endorsed upon it the nature and object of such suit,

and that it is to subject the * * indebtedness of such defendants to such non resident * * defendant to the demand of complainant; * * * * ."

Whatever the history of its origin and administration, the remedy by attachment seems in essence and substance to be equitable.

An attachment in chancery has been known to the laws of Virginia for nearly a hundred years, and in the New England States, where it is generally administered as a statutory remedy at law, it is nevertheless called the "Trustee process."

There is still a statutory attachment at law in Mississippi, but the language of this court in *ex parte* Boyd, 105 U. S., pp. 647-658, with reference to a New York statute prescribing certain procedure for discovery of assets, after judgment, seems to be applicable:

"Whatever logical or historical distinctions separate the jurisdiction of equity and law, and with whatever effect those distinctions may be supposed to be recognized in the Constitution, we are not of opinion that the proceeding in question partakes so exclusively of either that it may not be authorized indifferently as an instrument of justice in the hands of courts of whatever description."

MARCELLUS GREEN,
CALDERON CARLISLE.

Supreme Court of the United States.

W. P. WARE
vs.
J. H. ALLEN *et al.*
No. 99.

J. M. ALLEN,
Counsel for Appellees.

GRAY & CLARKSON, PRS.

Supreme Court of the United States.

OCTOBER TERM, 1888.

W. P. WARE, APPELLANT,
vs.
J. H. ALLEN ET AL., APPELLEES. } No. 99.

BRIEF FOR APPELLEES.

Statement of Case.

On the 21st of February, 1883, W. P. Ware, the appellant complainant in the court below, a citizen of Copiah County, Mississippi, filed his bill in the Chancery Court of said county against J. H. Allen, T. H. West, and J. C. Bush, appellees, as partners doing business in New Orleans, Louisiana. The proceeding was commenced under the statute of Mississippi giving the Chancery Court jurisdiction in cases of attachment against non-residents, and was subsequently removed to the Federal Court by appellees. The suit was brought on an instrument of writing in words and figures as follows:

NEW ORLEANS, *Nov. 7th*, 1881.

"Ninety days after date, we promise to pay W. P. Ware, or order, ten thousand dollars for two notes of T. P. Ware for five thousand dollars each, dated August 21, 1881, one on demand and one at thirty days, provided we are not defeated in the suit against T. P. Ware; if so, this note is void.

"Yours, truly,

"ALLEN, WEST & BUSH."

The bill sets out this instrument, and states that complainant handed defendants the two notes against T. P. Ware, duly endorsed, and that defendants were not defeated in their suit against T. P. Ware, but realized from it a large sum of money, whereupon said promise became a valid obligation, and that defendants refuse to pay any part of the same. (R., pp. 1 and 2.)

DEFENDANTS ANSWERED,

Denying that the instrument sued on was a valid obligation and setting out substantially the facts and circumstances connected with the execution of the same to show why it imposed no legal or moral obligation on them to pay it:

The following facts are substantially set out in the answer: That complainant was doing a business in Hazlehurst, Miss., in the name of T. P. Ware, his brother, complainant, having previously failed, owing a large amount of money which he still owed, and used the name of T. P. Ware for the purpose of shielding the business from his creditors; that while carrying on this business it became largely indebted to defendants, to wit: in the sum of $16,247.86; that complainant then went to New Orleans and informed defendants that the business was about to fail, and he, complainant, had T. P. Ware's two notes for $5,000 each, and that if defendants would pay or promise to pay him $10,000 for the two notes, that he would have T. P. Ware sell out to them, or any one they might name, the stock of goods at Hazlehurst, managed by complainant, and one at Crystal Springs, Miss., managed by T. P. Ware himself; or would have him assign to them, or for their benefit, all of his effects, or would have him abscond and leave the State, so as to secure their debt, with the $10,000 to be paid him included, and represented to them that his attorneys had assured him that a sale or assignment made under these circumstances would unquestionably hold good in law; and he proposed to guarantee the same. This proposition was accompanied with a threat that unless they agreed to his terms they would lose their debt. Defendants were aware of his control over the

assets, on which they relied to collect their debt, and were frightened lest complainant would make some fraudulent disposition of them; and they requested complainant to wait until they could consult their attorney, for whom they had telegraphed. But complainant insisted that they take the T. P. Ware notes, which they did, and hurriedly wrote and gave him the instrument sued on, with the distinct understanding that complainant would go back to Hazlehurst and keep everything straight until the attorney of defendants arrived; and if the scheme did not meet his approval, or he advised against defendants attempting to collect complainant's notes with their debt, then the contract evidenced by the writing sued on was to be abandoned; that the words, "the suit against T. P. Ware," mentioned in the writing sued on, referred to a prospective suit involving the attempt to collect the notes on T. P. Ware given defendants by complainant, and that no such suit was ever brought, the same having been advised against by both the attorney of the complainant and defendants, and abandoned in pursuance of the understanding and agreement made with complainant at the time of the execution of the writing, and afterwards when complainant agreed to leave it to his own lawyer, W. P. Harris, and to release defendants from the contract now sued on; that the whole scheme under which the writing sued on was obtained was a common scheme of fraud, and that the same was fraudulent and void and of no effect; that the notes transferred by complainant to defendants on T. P. Ware represented a simulated debt and were without any consideration. The answer accounts for the failure to return the T. P. Ware notes, which had been mislaid, and tenders them back to complainant with the answer (page 456, 7 R.)

The learned Judge who tried the case in the court below shows, by his opinion, that he thought the testimony taken sustained every allegation of the answer. He found that complainant was the real party, and T. P. Ware a mere figure-head in the business carried on by complainant; that

complainant could maintain no right growing out of that business; that there was no consideration for the notes of T. P. Ware to complainant, and no valid consideration for the contract sued on, and that it was understood and agreed when said writing was given that it was only to become operative in the event J. M. Allen, attorney for defendants, advised them that they could safely undertake the collection of complainant's claim, and that he advised against it, and, therefore, it never became operative; and that by subsequent agreement between the attorneys for defendants and complainant it was agreed to be and was abandoned; that defendants were only trying to collect an honest debt while complainant was trying to collect a fraudulent one; that there was no fraud on the part of defendants, except what complainant persuaded and frightened them into agreeing to by his misrepresentations and threats, and which they afterwards properly abandoned; and that they were not near so guilty as complainant, and that they are not therefore *in pari delicto;* that complainant obtained the writing from defendants by fraud and misrepresentation, etc. (Pp. 131, 132, 133, 134, 135, 136, R.)

The first assignment of error by appellant refers to the failure of the court below to sustain appellant's exceptions to testimony of appellees, but the assignment contains the statement that it was agreed that the court should hear all the evidence on the trial and consider only such as was competent. I suppose it is scarcely necessary to notice this assignment, as it all resolves itself down, at last, to the question as to whether or not, on the testimony of which the defendants could ~~largely~~ legally avail themselves, they were entitled to the decree rendered by the court below. If so, the decree must be affirmed.

BRIEF.

POINT FIRST.—The writing sued on never became operative, because its execution and delivery to complainant was coupled with a condition that suspended the commencement of the obligation, the condition being that it should only become an obligation in the event defendants' attorney advised that defendants would be safe in amalgamating with their own claim the notes given them by complainant, and attempting to collect them through the courts. That such a condition accompanied the delivery to complainant is shown by the testimony of J. H. Allen, where he says, in speaking of the execution of the paper sued on—

"He (meaning complainant) said he did not want us to jeopardize our claim if these notes he held would do so. I then told him I would telegraph for our attorney, John M. Allen, and would send him to Hazlehurst, and if his attorney and ours would say that we could legally include these two notes in our claim against T. P. Ware we would do so, but not otherwise. He agreed to this, and just before the time for him to go to the train for Hazlehurst, W. P. Ware said that he wanted some document to show our agreement in case our attorneys so agreed, as the whole matter was to be void unless they so agreed. We first gave him a receipt for the two notes, which original receipt we annex, marked Exhibit A, but he said that was not satisfactory, as we made no promise in case our attorney and his agreed to include his claim in our account against T. P. Ware. We then hurriedly wrote the other paper (as it was near train time), which is the basis of this suit; but it was written on the same terms and understanding on which the above receipt was written—that the said paper was to be null and void and worthless unless we could include the two notes in the T. P. Ware debt and collect them." (P. 39, R.)

DEPOSITION OF GOLDTHWAITE.

"I understood from W. P. Ware that what had been done in New Orleans was incomplete, and was to show a disposition to aid W. P. Ware in the settlement, if it could be legally done. (P. 59 and 60, R.)

Again, "He (referring to complainant) had gotten some kind of paper from Allen, West & Bush, when in New Orleans, that gave him some hope that they would help him." (P. 59, R.)

DEPOSITION OF J. M. ALLEN, RELATING HIS CONVERSATION WITH COMPLAINANT, IN WHICH HE TOLD W. P. WARE THAT J. H. ALLEN HAD TOLD HIM ABOUT THE CONTRACT:

"The business conducted by W. P. Ware at Hazlehurst, Miss., in the name of T. P. Ware was indebted to Allen, West & Bush in the sum of $17,000 or $18,000. T. P. Ware was in a failing condition. W. P. Ware claimed that T. P. Ware owed him ten thousand for money loaned T. P. when he went into business by W. P., and which was represented by two promissory notes of T. P. to W. P. for $5,000 each, which had been turned over by W. P. to Allen, West & Bush, and that Allen, West & Bush had given W. P. the paper here now sued on, and that it was understood that this ten thousand was to be by Allen, West & Bush included in their account against T. P. Ware, and that W. P. would have T. P. sell out to Allen, West & Bush, or assign and prefer them, or in some other way have T. P. Ware secure Allen, West & Bush for their debt and this ten thousand dollars, and that when this was done that Allen, West & Bush were to pay to W. P. the ten thousand dollars, provided they made the money on both claims out of T. P., and that, if necessary, T. P. was to abscond and leave the country; but this arrangement was not to be binding on Allen, West & Bush unless it met my approval as their attorney, and that if it did not meet my approval it was to be declared off or canceled. Mr. Ware agreed that this was the contract or understanding between himself and Allen, West & Bush." (Pp. 81 and 82, R.)

Here is the testimony of J. H. Allen as to what did occur, and the testimony of Goldthwaite and J. M. Allen that complainant admitted the facts to be as stated by J. H. Allen. This, taken in connection with the proven facts that the scheme was abandoned, that defendants did not attempt to collect the T. P. Ware notes, and that complainant made no claim under the writing sued on for more than a year after he now claims it became due, although making business contracts and negotiati ons with defendants repeatedly. (See J. H. Allen's deposition, pp. 47 and 48, R.) J. M. Allen's deposition (p. 85, R.) is certainly sufficient to establish this fact. But counsel for appellant contend that this proof is all incompetent, and that such an agreement cannot be set up by parole testimony, and they cite a long list of authorities affirming the general rule that parole testimony will not be heard to vary, alter, or contradict a written contract. It is not my purpose to controvert this rule or combat these authorities. Neither the rule nor the authorities, however, are applicable to this case. We are not seeking to vary, alter, or contradict a written contract, but to show that the writing here sued on was never an operative contract; that it was delivered on a condition that made its delivery in the nature of an escrow. If the delivery had been to a third party, it would have been an escrow; but being to one of the parties, it was in analogy to an escrow, or was a conditional delivery, which suspended the commencement of the obligation. That evidence is admissible for such purpose there can be no doubt. I ask the attention of the court to the following authorities on this point:

Simonton *vs.* Steel, 1st Ala., 357.
McCullough *vs.* Aufman, 2d Ames Cases on Notes and Bills, 257.
Thompson *vs.* Clubly, 2d Ames on Notes and Bills. 658
Roberts *vs.* Austin, 2d Ames on Notes and Bills. 216
Benton *vs.* Martin, 52d New York, 570.
Sweet *vs.* Stephens, 7th Rhode Island. 396
McFarland *vs.* Sykes, 54th Conn., 250.

Norman vs Norman 2nd Ames Cases 98.

Stevens *vs.* Parker, 7th Allen, 361.
Randolph on Commercial Paper, secs. 227 and 228.
Wallis *vs.* Little, 11 Common Bench Reports of New Series, 369.

POINT SECOND.—If the writing sued on was ever an operative, existing contract, it was afterward abandoned. (See deposition of J. M. Allen.) "He (W. P. Ware) said he would leave the matter to Judge Harris, and if he did not say it would be safe he would release Allen, West & Bush from the agreement; and it was finally agreed that I should go to Jackson and consult Judge Harris about it, and that we would take whatever course he advised, and that if he advised against it, he (W. P.) would release Allen, West & Bush from their agreement. I went to Jackson and had a long conference with Judge W. P. Harris about the matter, and he concurred exactly in what I had told W. P. Ware, and said that while he would like to see W. P. Ware get the ten thousand dollars, yet he could not advise Allen, West & Bush to mix their account with that claim; that he thought they would most probably lose it all. Several plans were suggested or spoken of by Judge Harris and myself in trying to devise some plan for W. P. Ware to get the money; but finally Judge Harris said he did not know how it could be done; that connected as W. P. Ware and T. P. Ware were, taken in connection with the history of their business operations at Hazlehurst, would most probably defeat any conveyance or arrangement made to secure a debt due from that business to W. P. Ware." (P. 82, R.)

It is true that complainant denies there was any such agreement; but when you look to the admitted facts, that Allen did go to consult Harris; that the scheme to collect the Ware notes was abandoned by the defendants; that about the time of the attachment and for more than a year afterward J. M. Allen and complainant had frequent interviews about the business, and that J. M. Allen drew a contract for complainant and defendants, under which complainant was to help to sell the T. P. Ware goods purchased by defendants, and

discussed the condition on which complainant could buy them, and, finally, complainant assisted his brother, G. L. Ware, in buying the goods, but never intimated once to said J. M. Allen that he set up any claim on the writing sued on but said to Allen more than a year afterward that as he had been instrumental in causing Allen, West & Bush to get most of their money they ought to do something for him, but did not then mention the writing sued on; that complainant wrote to defendants to answer a garnishment that they did not owe him anything. (See W. P. Ware's letter to defendants, p. 53, R.) These facts, I think, show that contract now, sought to be enforced, if ever operative, had been abandoned by mutual agreement, and, if it was, I suppose it is unnecessary to cite authorities to show that it can be proven.

POINT THIRD.—The complainant cannot recover because the writing sued on was obtained by complainant from defendants in pursuance of a scheme of fraud for the fraudulent purpose of defrauding the creditors of complainant and of T. P. Ware. It is scarcely necessary to refer to special evidences of fraud in this case; it is so apparent that I suppose counsel for appellant scarcely hopes to raise a doubt about that; but their contention is for the rejection of the testimony by which the fraud is proven. The fact that complainant insisted on having some one else try to collect th notes he gave defendants against T. P. Ware instead of trying to collect them himself is only explained by his fraudulent purpose. Complainant told J. H. Allen that the notes were given for money loaned by him to T. P. Ware when T. P. first went into business. (P. 38, R.) Complainant admitted the same to J. M. Allen. (J. M. Allen's deposition, p. 81, R.)

Hon. T. E. Cooper testifies that W. P. Ware failed in 1878. T. P. Ware begun business soon after in his own name (it was before September, 1879), using a part of the W. P. Ware stock. In 1880, W. P. Ware and T. P. Ware both swore on the trial of a garnishment issue that T. P.

Ware was not indebted to W. P. Ware in any sum, and that T. P. had none of W. P.'s effects in his hands. (See deposition of Hon. T. E. Cooper, p. 19, R.)

The testimony all goes to show that W. P. Ware had the management and control of the Hazlehurst business. He says that none of the money he loaned T. P. ever went on the books or the cash-book. (Deposition W. P. Ware, p. 103, R.)

Although he says there was an account of the transactions between them kept on the books. (P. 106, R.)

In answer to cross-interrogatory 58 (p. 107, R.) as to why there was no entry of the ten thousand dollars, complainant says: "There was considerable judgments against me, and as he had no regular bookkeeper, my brother and myself agreed not to put this amount on any book and not to let any one know anything about it, for fear that he might be garnisheed."

When asked how the cash-book could balance without this cash going on it, he answered: "It could not have been and was not expected; that was one reason there was no regular cash-book." (P. 107, R. Ans. cross-Int. 59.)

"He (W. P. Ware) did not want to appear on the surface as a creditor for some reason, and his whole purpose was to let it appear as a claim belonging to Allen, West & Bush." (Deposition of Goldthwaite, p. 62, R.)

"It was a matter that I tried to keep secret as much as possible, and I was satisfied that Mr. J. H. Allen wanted it kept a secret." (W. P. Ware's deposition, p. 113, R.) In answer to the question as to why he did not collect his own claim against T. P. Ware instead of swapping it to defendants for note, W. P. Ware answers: "I preferred to collect my claim without going into the courts" (page 124, R., Ans. to X-Int. 185), and in answer to why he wanted to keep out of the courts. "I knew my creditors would garnish the sheriff in case I obtained judgment on my attachment, and it would be an endless litigation." (Page 124, R., Ans. Cross-Interrogatory, 186).

J. M. Allen says. "In all my talk with W. P. Ware, about that stock of goods levied on, he spoke of it as if he was the owner, or as if he had full control, and would speak of the creditors attaching him, etc.; but he would sometimes say what he would do, and sometimes what he would make Tom do." (Deposition J. M. Allen, p. 84, R.) W. P. Ware says: "Judge Harris drew up a bill of sale of all T. P. Ware's effects to Allen, West & Bush for the sum of $25,000, which included my claim. I delivered the bill of sale to Mr. Allen after he made known what he wanted with me, and he at once accepted the bill of sale, but said he was not willing to pay me the $10,000 until after he disposed of this stock. I refused to make that arrangement with him, but told him that I would not consent to anything unless I got pay for my claim against T. P. Ware." (W. P. Ware's deposition, pp. 120, 121, and 122, R.) Now, when asked what the effects of T. P. Ware were that was included in this bill of sale for $25,000, to be made up of his debt and that of Allen, West & Bush, W. P. Ware says it was: "A store at Hazlehurst with something over $20,000 stock; some notes and accounts—don't remember how many and what amount; an interest in a tan-yard near Hazlehurst—do not remember the value of it; a stock of goods at Crystal Springs was valued at $12,000 or $14,000; that is all I know of." (P. 123, R.; ans. to X-Int. 175.)

Complainant here shows by his own statement that his proposition was to turn over to defendants about $35,000 worth of goods, and throw in a tan-yard and all the notes and accounts to secure his and defendants' debts, amounting, as he says, to only $25,000, and leave all the other creditors out in the cold. Complainant also says he had power of attorney from T. P. Ware to sign all notes, drafts, and other instruments pertaining to his business (p. 120, R.; ans. to X-Int. 156), and signed T. P. Ware's name without putting 'as agent' to it. (P. 120, R.; ans. to X-Int. 153.)

W. P. Ware says:

"I told him" (meaning J. H. Allen) 'that I had but one proposition to make: that was if he would give me their note

payable in ninety days after date for $10,000, I would turn over the two notes which I held against T. P. Ware to them and would also give him grounds for attachment against T. P. Ware. He said he would give me the note and pay it, provided he was not defeated in the attachment suit against T. P. Ware." (P. 122, R.)

When asked for what defendants were to attach T. P. Ware, complainant answers: "That was left entirely with Allen, West & Bush." "They were to have judgment for what they attached for or this note was to be void." (Top p. 114, R.) The attention of the court is specially called to testimony of complainant on page 114, R. When asked if his claim was to be included in the suit referred to in the writing sued on, he says: "I think they certainly intended to include it." (P. 114, R.) I do not think it necessary to quote further from the testimony to show that the effort to collect the notes of T. P. Ware in the way planned was a fraudulent scheme. Now the only question remaining is, was the testimony allowable to show this fraud? By far the greater part of this evidence comes from deposition of *complainant himself*, who was introduced by himself. Appellants contend that having made out their case without proving the fraud, that defendants can not prove it because they are *in pari delicto*. I insist that counsel for appellant entirely mistake the rule invoked by them as applicable to the case under consideration; but if they were right as to the rule and its application, I insist that it is not true that they can make up their case without going into parole proof as to what is meant by the words in the writing sued on: "Provided we are not defeated in the suit against T. P. Ware."

This, we insist, as was held by the Court below, opens the door for all the proof necessary to establish the fraud. I contend, however, that if this was not in the writing, and it was a plain promissory note without any condition in it, that it would be competent for defendants to show that it was made to defraud creditors, even though they were equally guilty with complainants of complicity in the fraud. This can be shown whenever the power of the court of equity is

invoked to enforce its collection. The writing itself is the embodiments of the fraudulent contract, and to say that a court of equity must enforce without being permitted to inquire into its fraudulent nature is absurd. No guilty party will be allowed to use the courts for the purpose of enforcing such a contract. It is an apparent fraud, and the court will not assist the guilty party to complete it. It would be a violation of Lord Coke's declara ion that "Covin doth suffocate the right." The court will not sit to enforce fraudulent contracts; the party invoking its aid must come with clean hands, otherwise courts of equity would sit to aid in the violations instead of the enforcement of law. To sustain the position of counsel for appellant would be equivalent to saying that whenever any person could get from another a writing that on its face made out a *prima facie* case, it could never be impeached by the other party, it matters not how fraudulent in fact the contract might be. The true rule is where a suit is brought on a fraudulent contract, *in pari delicto portio et conditio defendantis.*

Randolph on Commercial Paper, sec. 508.
Fay *vs.* Fay, 121st Mass., 561.
Stonburg *vs.* Bowman, 103d Mass., 325.
Church *vs.* Moir, 4 Vroom., N. J. Law Reports, 318.
Fenton *vs.* Ham, 35th Mo., 409.
Hamilton *vs.* Scull, 25th Mo., 165.
Powell *vs.* Juman, 7th Jones (N. C. Law).
Chitty on Contracts, 680.
Miller *vs.* Mickle, 21st Ill., 152.
Westfall *vs.* Jones, 23 Barber (S. C.).
Nellis *vs.* Clark, 20 Wendle, 24.
Ayers *vs.* Duncan, 50 Cal., 325.

Many other cases might be cited, but I deem these sufficient. If, however, I have mistaken the law and the effect of all these authorities, and the law is as contended by appellant's counsel, that parties *in pari delicto* cannot avail themselves of this defense, I insist that in this case the parties were not in equal fault, and that the doctrine of *pari delicto* does not apply. If one of the parties to a fraud acts under

circumstances of imposition or undue influence, so that it appears that his guilt is subordinate to that of the other party, equity will grant relief not on account of the more innocent one, but for the purpose of preventing a greater fraud by the more guilty. This is so even where the fraud has been consummated by the transfer of property, etc. (Bump on Fr., Con. 2nd, 441, and many cases there cited.)

Defendants were placed in a trying position. They had a large amount of money at stake; complainant was threatening them with probable loss of all of it. He falsely claimed that another creditor of T. P. Ware, Ben Gerson, was about to buy his claim and take the goods. He falsely represented that his lawyers had told him that the scheme could be carried through the courts. He originated the whole scheme and took advantage of their fears and anxiety about their own debt to bull-doze them into a promise to aid him in a fraud from which they withdrew before any one was defrauded by it. I think the finding of the court below was correct on this point.

POINT FOURTH.—The writing sued on was without any consideration good or valuable in law. The testimony that shows the fraudulent character of the T. P. Ware notes has already been referred to. Then they did not constitute a good consideration. It was certainly not a good consideration to agree to furnish grounds for an attachment, or that defendants should have judgment for whatever they sued for.

POINT FIFTH.—The writing sued on was obtained by fraud and misrepresentation. On this point I need only refer to testimony of complainant himself (on Record page 123, answer to cross-ints. 172 and 173), where he admits that his lawyer, Judge Harris, told him before he went to New Orleans that if his claim was contested it was doubtful how it would be decided. He then admits that he misrepresented to defendants what Judge Harris did say. He told Allen that Ben Gerson had offered him a large amount of money for the T. P. Ware notes. Gerson says he made no proposition to him; nothing was said about the T. P. Ware notes. (Gerson's deposition, p. 80, R.)

I do not care to follow appellant's counsel through all their comments on the testimony. They try to make something of the fact that the defendants attached for $18,000 when their judgment was for less than $17,000. I call the attention of the court to the deposition of J. H. Allen, in which he shows that at the time this attachment was levied the T. P. Ware account with his house was more than thirty-one thousand dollars, and to have sold the cotton on hand to T P. Ware's credit at the prices at which it was then estimated it would have left the account more than $18,000; but afterwards the cotton brought a better price, and reduced the account below $18,000. (See deposition J. H. Allen, p. 45, R.) Counsel contend that many things that depend alone upon the testimony of W. P. Ware are proven. I deny that anything in his interest is proven by his testimony, although it may be sworn to. He is contradicted by Goldthwaite and both the Allens in many important matters; and then the contradictions in his own testimony are numerous. I ask the attention of the court to his own history of his business transactions in Mississippi.

First. First in business in his own name and burned out with his stock insured; then begun business in Hazlehurst in his own name, failed in 1879, owing between twenty and thirty thousand dollars, with a stock of goods on hand worth $15,000, with ten or fifteen thousand dollars in his pocket. (W. P. Ware's deposition, p. 102, R.) Then became the manager of a business conducted in the name of T. P. Ware, his brother, and former clerk, with power of attorney from T. P. to sign his name to anything pertaining to the business, and when a bill was filed against the business alleging that it belonged to him, compromised with the attorney on the condition that he would take no more cases against him. When this business fails, he turns up with power of attorney from W. J. Ware, his father, authorizing him to do business in his name. The next we hear of him, he is managing a business in the name of his other brother, G. L. Ware. Then finally this testimony leaves him managing the business of Harris, Dodd & Co., in which his wife

is a partner, and still in possession of some of the same stock of goods that he had before he first failed.

I do not care to illustrate his sense of truth and right further than to ask the court to read on page 113 of the record his explanation of the fact that he wrote defendants to answer a garnishment that they owed him nothing. He says: "I think, under the circumstances, Mr. Allen could have answered that he was indebted to me or that he was not," and that either would have been proper. I do not think that witnesses for appellees need fear contradictions from such a source. I invite the special attention of the court to the clear statement of facts and the opinion of the court below. I have convinced myself that the decree of the court below should be affirmed. I hope I have been as successful in convincing this court.

J. M. ALLEN,
Counsel for Appellees.